Wm. Key Pond

Chillicothe

Ohio.

Nov. 1814.

Melancholy and untrue is the picture which they draw of the legal study who represent its prominent features to be those of subtlety and impudence, and of a labour dry and barren - Rather would I compare it to a mountain steep and toilsome indeed ~~at~~ its first approaches but easy and delightful in its superior ascents, and whose top is crowned with a rich and lasting verdure -

"Study and Practice of the Law"

Lectures

on

Law

delivered

by

Theophilus Parsons

and

James Hadley Greenleaf

at

Litchfield

Connecticut

& Boston

1811 & 1812.

Vol. I.

Mr Fogg's

1814

Contents.

Statutes. 2 Vol.

Municipal Law

James Fenlo Esq.

Law in its most general sense is a rule of action. 22nd Oct. 1811.

Municipal Law which is now about to be treated of is defined to be a rule of civil conduct prescribed by the supreme power of the state commanding what is right, and prohibiting what is wrong. 4th May 1812. Bl. Com.

It is called a "rule" because it is permanent, uniform and universal. The universality is meant, that the rule is general and not bounded within the usual limits. 1. Bl. 44.

It is conduct because it differs from legal rules which is limited and particular creatures considered as moral.

Municipal Law regards its subjects as members of Civil Society. Id. 2. 44.

Hence arises by this it is said that it ought to be made known and [illegible] for

and

[illegible] Law

[illegible] it [illegible] [illegible] any effect [illegible] [illegible] [illegible]. A retrospective Law and an Ex post facto Law are different: the former is any Law which has a retroactive operation, the latter has a retrospective penal operation.

[illegible] A Retrospective Law is always, but an "Ex post facto Law" is prohibited [illegible] ought never to be made: [illegible] other than a penal Law can come within the meaning of an "Ex post facto Law."

[illegible] the pardoning power [illegible] the [illegible] [illegible] the Executive power: it is the greatest act of sovereignty which can be exercised by one being over another, consequently it is necessary to the [illegible] of [illegible] of the Law that it be vested by the [illegible] power.

Rules to be observed in the construction or interpretation of a Law.

1. The words of the statute are to be [illegible] their meaning [illegible] their usual [illegible] and

[illegible]

power or jurisdiction to judge of it and always to be construed according to the intention of the parties expressed in that act. Where a general rule of law records have a known and determinate signification at Common Law, and are used in a Statute referring to and to the Common Law to determine their signification in the construction of the Statute. 2. If there are words used in a Statute to be doubtful the context must be consulted to establish their meaning: So where Laws are made concerning the same subject, parts in their Law must be construed with a reference to each other.

3. The words of the Law are to be understood with regard to their subject-matter.

4. The effects and consequences of a disposition construction and to be regarded.

5. That the law and ought to be construed is that the reason and spirit of the law

6 Mod 76
19 Ves 313
4 Bac 646 a
1 Bl 6 57

4 Bac 652
Plowd 206
Dr & Stu 123
1 Mod 365
1 Bl 6 60
1 Mod 144

1 Bl 6 60

Ind Jon
4 Bac 652 459
1 Bl 6 61

ought to be confined and when discouraged is the rule of Construction. From this rule results the Equity of the Law which is thus defined by Grotius the correction of that wherein the Law by reason of its universality is deficient.

[illegible] Com. [illegible]

But by the Equity of the Law Mr. Christian conceives it to be a construction of the Law according to the reason and spirit of it.

2d Lecture
1 Com. 63.

Municipal Law is divided into two kinds viz. the unwritten Law or the Lex non scripta and the written Law or Lex scripta. The former includes 1 the Common Law properly so called: 2 particular Customs and 3. particular Laws observed only in certain places. The unwritten Law is a customary Law but according to this division the unwritten Law and the Common Law are not the same: The Common Law is a branch of the unwritten and so particular customs which are a branch

[illegible]

of

of the Unwritten Law and not Common Law = It is called Unwritten Law because its original constitution is not determinately existing there being no written or general mention of it which can be called a Law: its decisions are only general Law: called the first branch of the Unwritten Law is the Common Law. All Unwritten Law is customary Law: The Common Law therefore is a Law founded on long and immemorial usage: it is called a general custom: it is called Common because it is common to the whole Kingdom or State = The Common Law depends for its support and authority on immemorial usage: by immemorial usage is meant an universal reception: it is not any custom general or particular is good if its commencement can be found in any part of the period of time between the reign of Richard 1st and the present time. This is the theory of the Law and theory only, 1 Bl. C. 64, 67

1 Bl. C. 63, 68, 77

for a great part of the common law has been made since that time:

But as the original constitution of the common law is not yet determined, it is to be sought, and it is to be found in the records of the several courts of justice: the books of reports and judicial decisions: and in treatises of learned men upon the subject. It is there to be found in carefully written memorials: yet these memorials are not law of themselves, but are evidence of the law: the act of parliament is law per se: if those memorials were law, per se a precedent once established, could never be departed from: but they are attended, overruled: and this is a substantial distinction between the written and unwritten law.

A precedent is a formal judicial decision on the point in question: nothing short of this can be called a precedent.

Salk 396 pl 3

The most authentic decisions of learned men can not be considered as precedents: & a mere opinion of a judge on the bench is no precedent. These decisions & opinions however are prima facie evidence of what is Law: & to the authority of precedents much has been said but it is now a settled rule that precedents are to be followed unless flatly adhered against: a precedent is not to be overthrown because the reason of it can not be discovered: no that would effect to a precedent Flat 155 [illegible] 575 [illegible] 1 Bl 6 [illegible] 70 [illegible] that it ought not to be continued as a precedent. the crime fornication &c, and the offence infecting. This Continuing Law was actually enacted and built up by the Courts of justice and the judges in the County at Westminster Hall: If there is no concomitant Law there can be no such thing as a regular and uniform system of jurisprudence. If the Common Law

was created by the Courts of Justice it would seem that it did not come within the definition of Municipal Law of which the Common Law is a branch because it must be prescribed by the Supreme Power: But to this it may be answered that the Supreme power was required in it and when any Law is sanctioned by the acquiescence of the Legislature it is sanctioned as Law. Many rules of Common Law are not Law but evidence of what the Law has been and have exception are evidence of immemorial customs.

The second branch of the Municipal Law consists of Particular Custom: the difference between this and the Common Law is sufficiently shewn by the terms themselves. A particular Custom is a local usage. This is called particular because it extends only to the inhabitants of some particular District and this is the essential

1 Bl. 76
2 Bl. 263.

difference between Common Law & particular Customs: as to the general nature. But there are several rules which relate to particular Customs only. It is a general rule that a particular custom must be specially pleaded and as a matter of fact and the existence of the custom must also be shewn and they that the same comes within the Custom: And as particular customs are to be specially pleaded, so they are to be tried as matters of fact, and must be traversed and tried by a jury. (But if the Custom has been before tried and decided on by the same Court it is not to be tried again: the Courts are presumed to know the Customs. There are two particular Customs which do not come within this rule: these are the customs of Gavelkind and Borough English: these need not be specially pleaded, Courts of Law take notice of them as matters of law.

Litt. Sect. 265
1 Inst. 175
2 Ld. Raym. 1086

will lay

See Litt. 175
1 Bl. 75

The

by the Merchants among particular customs but rather should be according in principle because the Law Merchant is no local usage. The Law Merchant [illegible] 2 Bl. 459, 461, 1 Term 97, 99, Cowp. 45, 47.

[illegible] general particular transactions within the realm: but it is not confined to local limits it is a branch of the common law. That it is not a particular custom appears 1st because it is not necessary that it be specially pleaded. Secondly if it were a particular custom: 2d The Defendants may not treat it as such but particular customs are. Sed Quere is not it to be found by evidence: Every one to particular customs. When it is said that merchants ought to be acquainted with the existence of customs or that it is sent by it, it is that they may inform the judge, that is the court which is to be would consult a Dictionary to find the meaning of words the [illegible] [illegible] 1 Bl. 6 4 364, 2 Bl. 459, 461 464, 2 Bos. 1018, 1021 n. 1036, 1 Ld. Ch. 208, 1 T. Rep. 118, Ch. Ley 13, 8th 159, Bayley 102, 4 Co. 3

As to the qualities of Customs

or the requisites to constitute a good custom and it is necessary 1. that it be immemorial: 2. Continued or uninterrupted as the right must have continued: 3. It must have been peaceable and acquiesced in. 4. It must be reasonable (custom or rather it must not be unreasonable) 5. It must be certain (i.e. intelligible, not vague and uncertain) 6. It must be compulsory and 7. It must be consistent with each other = It is a general rule that customs in derogation of the Common Law are to be construed strictly (i.e. they are not to be extended by analogy and by construction = In England all Customs must submit to the Royal Prerogative

It has already been observed, that the unwritten Law consisted of three kinds. the two first have been enforced, and now the third kind is to be enforced

R. Lecture

1 Bl. C. p. 8
Plowden 58
1 Mod. 113 114

1 Bl. C. p. 9

1 Bl. C. p. 9
1 Ch. 5

Municipal Law

1 Wil & Mary 7 & 8 Wil 3 c. 33

The third class of particular customs or Laws are those adopted by custom and usage only in particular County. These particular Laws are the Gavelkind and Borough English Laws. These Laws are existing in England by adoption: they are now existing on account of any original intrinsic authority.

The Common and Statute Laws in England, so far as they are indiscriminately in this Country derive their authority from a similar tacit or implied adoption or assent rather than a Statute of England is adopted by a Statute of any of the United States: it is clear that our Courts ought not to neglect the Common Law of England only in those cases where it is unjust, altered or inapplicable to our Constitution. The Common Law of England is prior, even the Common Law of the United States. The Courts with this ought to be confessed

that

this, is that in general it has been adopted and acted upon as a rule of law usage and convenient confirmed by the pleadings that all the common law of England is to be taken to be adopted in this Country because the subsequent acts from the Original parent cannot operate here from the nature of the thing: but all that is meant is that the common law of England ought to be observed here as rights when it is applied, equal or inapplicable to our situation =

It has been made a great question whether a common law offence from the common law of England can exist in any one of the United States, or in other words whether we can have rules of common law which are unknown to the common law of England = The objection raised against the holding forth of such

Decisions

exceptions only that they are not sufficiently
marked by positive words.
So far as the Common Law of England
is not applicable to our situation and Country we have to adopt it
if we will, but it may be said every
Civilized State must have a Municipal
Law of their own for without it
there would be no Guardians of Justice
and no rational and consistent Protection
of Independence can exist without
it: the Members would be willing that
we have a Common Law founded on
a basis of our own: If we had a
Common Law it must be without a
real experience of the positive Law which
England has established concerning the
Reign of Richard I. Our Customs and
Usages are as old as our Government
and as formerly in England a custom
of 100 years old was good upon the
ground, we have a Common Law of

every per our Government is of more than Sixty years standing

The second branch of the Municipal Law is the Law Written or Written Law: by which is meant the Statute Law made by Parliament. 1688 1 Locke 20

The ancient English Statutes are said to be binding in this Country as far as the Common Law in case they are found fit for the Law of this Country. The reason why they are so considered is that our Ancestors when they settled this Country brought over in their birth right the rights of the Law as was then extant: the second country that these Statutes are only binding but that it is right for them to have that Law so far as it was applicable to their situation

The English Courts also agree as to this that these Statutes were the Law of this Country

Municipal Law

Salk. 411. 1 Ld. Ray. 186. Com. Dig. 2 Ch. 45. Dyer 59. Fitz. Ed. 250. 3 Ld. Ray. 1-3

The question arising that modern Eng. lish Statutes have any force here but that Colonial Statutes are passed for our Government of this Country.

It is then however that by far the greatest portions of the English Statutes have been adopted in this Country: Many of the Statutes we have adopt of course: our Courts of Justice have adopted them: So that what in England is Municipal Law may here be and be understood Law. So acting on the case and Cases are unknown to the Common Law. They were created in England by Statute and adopted in this Country of course.

The Statutes are either public or private or general or special

1 Bl. C. 85. A Public Statute is defined to be one which regards the whole Community.

A private Statute is one which regards private concerns or particular persons: Part the application of the

distinction is attended with much and frequent difficulty. The definition is by no means a perfect one but perhaps it is as good an one as can be given: Most public Statutes do regard the whole community, as the Statute of Frauds & consequently there is no difficulty here. But in many cases Statutes relating in particular and in the terms of them to a class of men are considered as public Statutes. The rule of discrimination seems to be this viz. If the class of persons to whom the Statute relates amount (as any land or other property) to a "genus" tis a public one but if it amounts only to a "species" it is a private one. Yet it sometimes happens that a genus may only be a species of a higher genus: in which case the rule is, if the class of persons contemplated by the Statute will admit of a subdivision into species

is a public statute. but if it consist of a subdivision into individuals only it is a private statute: & a Statute

2 Coke 76 a.b. 19 Vin. 496 Co. Lay. 120. §81 Ch. L. 86. 4. Co. 76 a.b. 9 Cand 84-154. 1 Lev. 26.

means pertaining to all freeholders, is a public Statute for the term freeholders is a genus consisting of subordinate species: But if the Statute points to a certain number of a subdivision in species. as are Statutes qualifying persons to serve as public officers are public Statutes, but if concerning Sheriffs only its private. Every statute in

1 Sid. 209. 4 Co. 75 8 C. 28. 154 Cro. C. 297.

the Law which concerns the King is a Public Statute of course.

Lac. 640. 9 Co. 57 1 Ld. Raym. 65 2 Keb. 429. 3 Mod. 249. 613

A Statute giving a forfeiture to the King is a public one, and every Statute concerning the public revenue is a public one: A Statute may be partly public and partly private the relevant to be treated as a public the other as a private Law.

9 Cand. 640.

Statutes are again divided into such as are Declaratory of the Common Law and such as are remedial of it: A Declaratory Statute is one which declares or promulgates what the Common Law is or has been. Hence Declaratory Statutes, do not create Law but promulgate those which were already made.

Remedial Statutes always in time make a new rule and thus by supplying any deficiency in the Common Law or abridging any superfluities in it: All Remedial Statutes therefore abrogate some rule. Our Statute declaring the tenure of lands is an example of the Declaratory Statute.

But Statutes in general are Remedial: Again: All Statutes are either Penal or Remedial or Penal and Remedial which is the most proper term to be used: Height the word Remedial

p. 60.

is

Transition Laws

is here used in a different sense from what it was in the last section of Statutes. Being here used in a sense distinguished from the word "penal" a Statute inflicting a penalty or punishment of any kind is penal.

The word penalty in its most extensive signification is synonymous with the term punishment: But it is now used in a more limited sense, meaning a mulct, forfeiture or amercement. There are certain Statutes which operate as penal Statutes, but are not treated as such: The Statutes which give higher damages than the rules of National justice require, operate as Penal Statutes, but they are not considered as such. All Statutes therefore which are not penal are Beneficial & liberal: Statutes allowing appeals in civil cases are considered as penal Statutes: Appeals were not known at Common

Law

1 Bl. w. 454. Cowp. pa. 414-15.

1 Bl. R. 1 Fox 125 6. 2 Fox pa. 414 Cowp. 190-1 Sedgwick 1-1

4 Burr. 657. Willes 26. 3 Bibb 4 Hayes 29.

Law. They were introduced by the Statute of Gloucester in the reign of Edward I. and here only are considered as a special exception to the rule above given. But although Statutes implying a penalty of any kind and penal Statutes, yet it does not follow that a prosecution to recover this penalty, is a penal action for an action brought by an individual to recover a penalty in his own behalf is a civil action: The Statute is penal but the action is civil. Debt is the proper action to recover a penalty. The form of the action is determined whether it is civil or penal: this distinction is very important for a penal action is not within the statutes of Jeofails: consequently the pleadings or proceedings in a penal action cannot be amended but are strictly to be used in every case in civil actions tested

Bac. 100
Salk. 205
1 Bac. 571
4 Mod. 7
Hard 359
Carth. 19.
122
6 Edward I.

Bac. 100
Comb. 389
391.
4 Mod. 7
Salk. 205

but such as in our case will be admitted in a formal action, consequently the affirmation of a Quaker is inadmissible in formal actions, Sevey v. Blake.

Public Statutes are divided into Affirmative and Negative Statutes. Affirmative Statutes are those which are couched in Affirmative terms, and Negative Statutes are those couched in Negative terms. The distinction is important only as it respects the Construction of Affirmative and Negative Statutes. It is a rule of the English Law that all Statutes go into Operation the first day of that Session of Parliament in which they are enacted unless otherwise provided: it being a fiction that the whole session consists but one day. Consequently Statutes may have a retroactive effect, as in a Court of Equity. However, it is not to be presumed in the

1 Ch. Ab. 4 Ed. 4.

3 Geo. 1. c. 15.

Dwarris 1 Ed. 4. c. 1. 2 Ed. 3. c. 3.

construed

Statute the time when it shall take effect. And from this it follows, that if two different Statutes are given on the same subject and one of the same degree of Parliament, matter of them has priority: yet if they are completely repugnant it is held that neither can take effect: but one of the Marginal Authorities* disputes the Law Statute. This rule however presupposes that no time is appointed for the Statute to take effect. This rule of English Law has always been adopted in Connecticut: Statutes there do not take effect until a reasonable time has elapsed after their Creation: and the rule of Law runs that no Statute shall have effect until the close of that Session of the Legislature in which it was enacted, and not till the Representatives have time to return home. This is a general rule.

* Gray 22 in Bac Ab 638

* 6 Mod 28 538 3
19 Viner 520 5

* Marquis

Municipal Law

Of the Construction of Statute.

Construction, that process by which the mind ascertains the meaning of the language used, which is to interpret the law provisions, is one that is the law itself. In the construction of American Statutes, three points are to be considered: 1. the Civil Law: 2. the Principles and 3. the decisions of the particular Judge of Construction.

Rule of Const. 3 Ch. 13

I have already been given: and all the points are to be observed in the construction of all Statute Laws. But though these Judge are to be governed by Statutes are to be construed strictly, and according to the letter of them and not according to the Spirit: this rule applied to the exceptions are less considered: it applies to cases within: provided the meaning of the Judge is that general Statutes are to be construed strictly as against the public and liberally for

the

The rule then is in favour of the prisoner acts together, no person shall be adjudged guilty under a penal Statute, unless he is within the letter of it. however plenitly he may be within the spirit of it: so if he is not within the letter he can not be brought within it: and on the other hand though a party is within the letter of it, he shall not be considered as such he is within the reason and spirit of it likewise.

Cloud 19. 1 Bl. 6 8v. 3 Co. 7. 8.

Leachy Cas. 1. 107. 70. 295.

Leach. 384. Hawk. 53. 61. 1. 0. 131. 135.

The rule then accounts to this, a judge may resort to the reason and spirit of the law to take a case out of its penalty but he can not resort to the reason and spirit to bring him within its penalty.

Leachy Cas. 1. 70. 107. 295. 2. 33. 310. 384.

A Statute inflicts a penalty on ~~any~~ person who shall do such or such a thing, yet in some cases Freemen Courts are not within the Statute: So if a Statute inflicts a penalty on any person who shall let blood in the

a municipal law

the State or Sovereign to the Party or person in the State is not within the Statute = for the Construction of Statutes whether penal or not a Good Verygood Judge the intention of the Legislature should prevail

If a Statute for the prepetration of an offence inflict an additional punishment the Offender is not liable to the accumulation or additional punishment unless after he has been tried & convicted of the first Offence

2 Bulst. 344. Frank. 68. Hard. 435. 4 Bac 65. 1 East 90. 380. 1 B. & A. 32 & 53 [illegible]

To subject a prisoner to the accumulation punishment he must have committed the second offence after he was convicted of the first: the Court conceived this to be proceeding too far & giving too liberal a Construction

The rule of strict Construction of Penal Statutes against Strangers is not universally observed: thus by the Stat. 1. Edward 3. killing the Pharaoh

[illegible] Pilot Reason, the rule relating of the Outward lights keep, in the Rivers below there is no Master are internal [illegible] but they are internal and are by Construction Pilot Reason and so in our or two other cases: But Mr. Coke thinks the intention of the Legislature in all cases should be carried into effect: in Criminal as well as in Civil Cases

Cr. Cha. 71. 4 Bac. 651 Plowd. 86.

4 Rep. 3.

Penal Laws of our Country cannot or take no notice of in another: So as to have any effect as to the Prisoner: these Laws are local not transitory: But the rule is that Lex Loci shall govern as it respects Civil relations

1 H. Bl. 123. 3 Rep. 752. Doug. 38. pp. 80

The penal Laws of every Country extend through the Jurisdiction of that Country and are the rule to all persons within the Court whether a foreigner stranger Citizen or otherwise: In Connecticut they are in the habit of trying every person and punishing any person who

Mulp. 38. 2 pp. 80

shall

should steal a hogshead in New York and bring it into Connecticut and there be discharged: This is clearly contrary to the Common Law, and is held in Connecticut even and takes notice of the general Law of New York and of course cannot have judicially any thing relative to any theft or not: such a Law that Courts receives to be universally unjust: for as the case may be theft may be punished in New York by Imprisonment and in Connecticut with Death:

1. State vs Coppins

If was decided Contrary in the United States Circuit Court on the trial of Judge Patterson=

Pratt Rep.t 57 Rep.t 58

When the penalty is continually incurred, the continuance of an offence is in continuing a Nuisance: one penalty only can be sued for and recovered at a time: Decisions of the Court in Connecticut have signed but one penalty altho' it was frequently incurred

Pratt Rep.t 58

from the consideration of the ground of fence which is directly applied to the English Law.

Penal or Remedial Statutes.

These are to be construed liberally or rather Specially in the Construction of which the letter may be extended or restrained or enlarged in order to effectuate the intention of the Legislature. So as to include cases not within the letter and taken out such as are within the letter: thus a Law touching the ducking pond be extended to take in both Ponds and Inundations: where the reason is the same: Again the Statute of Henry 8. authorizing all persons to make gates for Commoners, refers to Inclosures of land only:-

3 Bl. Com. 86.
3 Bulstr. 4
Plowd. 365
" 465
Coke 23
" 24 b.
Dyer 58. 2. 3
Fitz. 300

Vide Dyer 3

3 Hen. 8. c.

Dyer 54

If a petted hate a Statute turning a way a Common Law remedy it to be construed strictly* than the Statute of Limitations taking away a Common Law

* because it abridges the rights of the subject

Municipal Law.

remedy is to be strictly construed. So in Connecticut where there is concurrent

11 Pa. 258. 1 Pa. 130.

with the trespass the Court held it not to be within the Statute of Limitations.

The cases from Pennsylvania state and

Lantz 5 S. & R. 239. Ott 2 S. & R. 486.

seem to be reasonable so as to extend the remedy of the Citizen against the Corporation although there was no express provision in the Statute for allowing it. The Constitution itself might be construed literally and so as to exclude an injunction. Statutes partly penal and partly beneficial are to be construed strictly in part and liberally in part. Or liberally when it operates in the offender's favor strictly when it operates against the offender. In the Statutes a remedy which was generally penal: have allowed the State to sue in the offence and inflict a penalty and the Constitution is strict. But when it acts on the offender by giving a civil remedy against the fraudulent transaction the Construction is liberal.

Ex. Planning the 22. Mar. 8.

Wed. 28 in 2 Wat. 3 Wis. 20. Or 20 Ind. 49.

Alternative Law.

The different parts of a statute are to be so construed that if possible the whole may take effect: Repeal by implication is not favored but a clause or provision which is wholly repugnant to the rest of the statute is utterly void, and the enacting part is good. So if statutes relating to land of the Crown, covering the repeal of two statutes are repugnant to each other the latter in point of date repeals the former: So if the latter part of the same statute is repugnant to the former part or that they can not be reconciled, the latter repeals the former in proportion to the repugnancy. This is different from the case of saving (let supra): because being made from a mistake the other can not be accounted for from inadvertence: Where the Common Law and the Statute Law differ the former always yields: the reason of the Statutes so frequent since the time of making it

Co. 47. BC 287.

H. Lecture 19 Vin 511 6 Mod 287 Ld. 1 111 115

11 Co. 54 4 Bac. 638

2 Geo. 3 c. 28 § 6 — it can be ascertained: Since as to the Land now Land which is unalienated: Hereafter the Public Law is bound of Foreign Authority: Every State in its Nature is Repealable: hence it not in their power to be continuance of Foreign Law: For Legislature must be Sovereign of their own: Repealing is an act of Sovereignty: Between of people or Crown in a State: that is which reason Implication is Repealed: is not the Acceptance of the power of subsequent Legislature =

2 Geo. 3 c. 13. — 2 Geo. 3 c. 28. — 1 Blk. 90.

The Law now Governor is repeal of a former Statute by implication: under this implication arises hence Repugnancy or inconsistency: This and that Affirmative Statute, do not repeal the Common Law: But Leave that in the unaltered: for Repugnantly such Statute implied a repeal of the Common Law (as they be inconsistent with it): So the Common Law rule is that notice be given to the Parties

Take 33 Geo. 3 c. 8. — 1 Rol. R. 88.

Com Dig. title Ch. (D) 2 — 1 Bl. 89. — 2 Bac. Ab. 332 — 4 Co. 126. — Dr. Bonham's Case — Plow. Com. 86.

paid

the days before the return day of the process and the statute twelve days after judgment a penal statute inflicts a lower punishment than the common law: it repeals pro tanto.

Affirmative statutes sometimes give an accumulative remedy and then the statute not abrogate the common law: E.g. of statutes giving double damages for certain trespass state the injured party may appeal at common law: If a statute inflict another punishment than the common law it is called accumulative: Against this it is said that an affirmative statute does not repeal an affirmative statute: this first should seem to be an incorrect and very absurd rule. for one statute always repeals the other if it is inconsistent with it: If a statute inflict a higher or a lower punishment for a given offence than a former one the former is repealed: for if a statute inflicts a higher punishment

9 Bac 805 805

Dalton 15 Pet 5 80.

4 Bac 55. 4 Bac 525 Leach 282

1 Ind. 33. 2 Ind. 550. 4 Ind. 254. Plowd. 366

for a second offence, then a second fine inflicted. The second fine is not repealed but when it inflicts a lower punishment than the former fine the second fine is enforced. This rule is founded on the language of the law.

1 Ind. 502. 1 Ill. 8 Gr.

Upon repealing a repealing statute it itself is repealed the statute first repealed is revived. If one statute should be repealed by three different ones and at once future period two of them should be repealed the first other plan and other repeals the original one.

Sec. 63. 1 Ind. 13.

If a statute which has been repealed is revived then the repealing statute is never of no force.

1 Ind. 455. 8 Ind. 154.

It is a rule that when a statute is repealed all acts done under that statute are forever continuance and valid.

1 Ind. 29 33 1 Ind. 538.

Where a statute is declared void it is by a subsequent legislature as if acts done under it are void. The statute

(Constitutional) Law

pres appears to him to be contrary to the first principles of jurisprudence: The Legislature have no power to pass such a Statute two and al initio: they are not the persons who are to decide on the constitutionality of a Law: by the province of judges to pronounce whether and not is law and or not: if they decide that it is not Lawful or Constitutional then to be void: not any one under it are void, for a bad Law will protect no man.

If a Statute is repealed by another Statute which makes provision on the same subject, which provision is limited and confined at a limited time yet still 3 Ball 220.
the general Statute does not revive

of a general rule, no Law and have a retroactive operation, yet Statutes so penal may have such an operation: it follows then of course, if a Statute having been violated, and before the judgment is pronounced against the offender is repealed

Cranch 3 Cr. 336 — once a new law is made on the same subject the offender can not be punished nor can he be punished if there is no new law made: the court must wait the other law for there is no law authorising the judges to pronounce sentence. and he can not under the law for this statute was not in existence at the time that the offence was committed: the party has sent as the case may happen be punished at common law. This doctrine was recognized in the Circuit Court of the United States.

Fearwater 3d Court 4th Term 1808 — If has already been offered as to petitioner by some other it is to be stated that if one covenant to do and act which may at the time of Covenanting be lawful but is afterwards made unlawful by a statute the Covenant is void and void: So if a person should covenant to do that a certain Article which should afterwards be made contraband to wit, the

Salk 198 — 3d Rep 2 b.
1 Bro 317 — 3 Bro 35 — 3 Ver 414 — 1 Salk 20 — 1 Ch Ca 39 — Fox Copyr. 1

covenant should be void: And on the other hand if one covenant not to do an act which is made his duty to do by Statute the Covenant is annullled: Thus a Statute requiring all the Citizens to turn out in defence of their Country, annulls the Contract between an Apprentice and his Master: Mr. Foulds conceiving neither of these cases to be inconsistent with the Statute which enacts that the Obligation of Contracts shall not be impaired by a Statute. for by that Statute is meant that no Statute in the terms of it shall impair a Contract. Salk. 198

If one covenant not to do an unlawful act, and a Statute afterwards makes it lawful: the Covenant is not annullled. Salk. 198

In the two former cases the Covenant is offensive to the Statutes, but in the latter case a performance is not inconsistent with the Law: If a Contract declared illegal by the Statute is made, while

that

1 Geo. 3 c. 15 — that statute is in force in Ireland and repealing statutes, still not make the Contract void nor does such Contract be not enforced: but where the complete performance is made illegal by a Statute yet if a partial performance may be made consistently with subsequent Statutes the Party, if he requests it, may recover in a partial performance and the partial performance may be supported ~~by the~~ by a Court of Chancery* instead

Fenlon 2 Ves. 204 2 Atk. 55 81

2 Ves. 31 c. 181.

3 Bro. Par. Cases 38 c.

* They called the Rule in one instance by

the Fenlon thinks in one case in a Court of Law† Such Contract however must be made before the prohibiting Statute:

The rule is the same where a complete performance is rendered impossible by an act of God: thing if it covenant to convey to A. the Manor and one is burnt, by lightning other he shall be bound to convey the remaining one

Cord. 284 Pow. 96 - 108

Id. 2 ...

It is said that a Statute requiring a thing is void in a due validity: and it is

Dissenting Opinion

Dwarris 5. Co. 118.
Hob. 87 & 89
1 Term Rep. 23.
1 Wh. & 41. 91

said Lord Coke that statutes contrary to the Law of God and reason are void: This principle is admitted in one part of Justice Blackstone's Commentaries and denied in another: Mr Ford conceives it to be a position which can not be questioned: he says it is clear that the judges are bound to follow and enforce laws which may be contrary to the laws of God: But the question whether Legislative acts contrary to the Constitution are void? is a very different one: It is clearly settled in the United States that they are void: Courts of Justice are at liberty to declare them so: The object of the Constitution is to prevent Legislative usurpation

2 Federalist
93 & 78
1 Tucker
Black. Com.
314 & 91

It is said when a State makes a law, it cannot be a matter of justice to appeal to the Court: it is bound to decide in favor of its own laws and the parties may as well claim it as a matter of right =

5 Cranch 88.
2 Gallison
323. 3 Dall.
4 Wheat 316

1 Black 8. 17. 2 Cooke 18. 3 Mod. 280. 3 Comb. 394. 2 Burr. 1147. 1 Saun. 442

If a Statute makes a new law concerning an old offence and constitutes a new Court to execute that law, then the jurisdiction of the ordinary Court of Criminal Jurisdiction is not ousted: If a Statute ordains that all Criminals of a certain particular description shall be tried by certain particular judges, the rule of the same: through the jurisdiction of a Court is not to be ousted but by implication. If the Jurisdiction of the ordinary Court of Criminal Jurisdiction is ousted in this case it must be done by implication, and it is clearly established that the jurisdiction of Courts of general jurisdiction is never ousted by implication.

But if a Statute creates a new offence and also creates a new jurisdiction for the trial of it the Court of ordinary Criminal jurisdiction is excluded.

1 Black 3. 2 Stale 5. 1 Stra 124. 3 Comp. 394. 2 Salk 543. 1 Black 304 note

The Authorities are not agreed on this subject, however it appears to be a rule that

that the Court of Kings Bench would be welcomed. If a special authority is given by a Statute to certain persons of taxing the property of individuals, that authority must be strictly pursued & it must appear upon the face of the proceedings to have been strictly pursued otherwise it is not valid. Comp. 20.

When a Statute enables a certain number of persons to transact business by a vote of a majority and constitutes a certain number of them a quorum it is a question whether a majority of that quorum can bind the whole body. The better opinion is that a majority of that quorum is not binding. The Corporation have no powers but such as is expressly given them or such as is incidentally incident to them. It seems that a private authority exercised by Statute and conferred upon two or more persons is joint and not several, unless it is a

1 Chr. 64 P.
10 Co. 30
Bac. Ab. 211
3 T. Rep. 592
4 Dr. & Ar. 2
in note to

Rex v. Corporation of Liverpool

Exercised

expired: and this power ceases on the death of one of them: But it is said if a power of a public nature is given to several the act of a majority will bind the whole all being present: But the above rule does not affect corporations for where a Corporation is created a majority of the present can act for the whole: the individuals who compose it are not regarded.

1 Bro. P. 181. 2 Burr. 1334 Cowp. 336 2 Ves. 317 10 Ves. 3 Term R. 592.

3 Ath. 202 212. 3 Burr. and Cur. 1353.

There is a maxim in the Law based upon the Construction of the words void and voidable act and void act. A void act is a nullity ab initio. A voidable act stands good until the act is set aside by due course of Law: A void act can never be ratified: a voidable one can. A void act can be taken advantage of by any person but a voidable act can be taken advantage of only by the parties or their privies in Blood, Estate or Law.

1 Bro. P. 45. 3 Ch. Ca. 60. 2 Ch. Ca. 207 9 Co. 5 2 Rep. 600. 7 Co. 30 3 Mun. R. 25 43

as to the construction of these words, if the object of the legislature can be attained by construing the word void to be the same as voidable than the word is construed as if it were voidable. But if the object of the legislature, cannot be effected by construing the word void to be the same as voidable then the word void will have its strict construction = This distinction is not ground in the Courts the authorities cited are merely in obiter = The rule as to the Construction of Statutes and the same in Courts of Equity as in Courts of Law but the mode of enforcing the Law is in many cases different: and it is hard to be determined that the rule of Construction of the words in Contracts, as in Bond and Mortgages

3 Bl. 430, 438.
1st Term R. 98.
Burg. 264

Municipal Law.

Lecture. 6. 8. May 1842.

Of Pleading Statutes and the Records of Proceedings in Parliament. There is an essential difference between pleading, enrolling, citing and reciting Statutes. — Merely to plead a Statute without more is necessary then to show that the Act was within the Statute. E.g. Statute of Monopolies nothing more is necessary than to plead the permission from Infr. pec. Venue.

Reciting and Stating is a different thing from pleading a Statute. Reciting when a Statute consists merely in an express reference to it as "recited the form of the Statutes in such made and provided" or "the purtenance of the Statutes in such case made and provided".

Reciting a Statute is to quote its contents: To plead a Statute to recite its contents and to conclude it hereof and different times but often confounded.

It is a general rule that judges are bound to take notice of Public Statutes: but judges are not judicially of Private Statutes unless they are set forth: the rule is the same concerning private Statutes as Bonds or other private Contracts. In Connecticut under and by virtue of the General Issue and Private Statutes: But case is meant head the Statute as be deemed a private document: Not here as rule as in England the Plaintiff if a Group his Action on it: it must be set out as Deeds &c.

A Public Statute which requires to be pleaded or counted upon, need not be recited. The past time it is not necessary to recite a Public Statute yet a Prospectal will be fatal, provided the Prospectal is in a Material part and after-Recital although the Statute

1 Co. 76.
10 Co. 57.
1 Ch. 86.
Ch. 30 & 36.
9 Mod. 57
1 Bac. 38 & 383.

Stat. Ent. 3
342. 3

4 Co. 76
10 Co. 57
1 Bac. 38

1 Mod. 308
Cro. Eli. 93. 5
2 Ro. 5
2 Bac. 383-4
Co. Lit. 303.
1 Ro. 302 & 303
Cro. Car. 447. 8
Doug. 761.

not have been pleaded. The first recital of a Public Statute is not fatal

Cloud v. Hockaday 2 B. & C. 707 Freeman v. Rosher 2 Q. B. 380 2 Saund. 131

pass Good if it recites the substance of it or but reciting the Statute and then concludes by saying "against the form of the Statute aforesaid". If it recites the last rule is correct and when the mistake is upon the material part but not otherwise. The last rule is the correct and prominent rule. Other Conditions recited of a Private Statute is not enough if true, on the pleadings appearing on the face of them. If the private Statute is

4. Co. 18. 2 Roll. Ab. 382. 2 Lord Raym. 1084 Stat. 356 2 Freeman 3 Ed. 3 Ch. 3

material advantage may be taken of it by pleading "the Record" or it may be taken advantage of by plea "and not" if the first recital and demur. In this respect a Private Statute is tried like a Deed.

* or he may demur, plead and traverse the variance

In a general rule that a Public Statute need not be pleaded but they

is not universally true: as if a Public Statute in England be handed, it is to be taken as a Specialty must be pleaded: If to a Debt or Wrong the Defendant would depart the Specialty* he must plead it but not recite the Statute. Yet to depart a Simple Contract he need not plead it = One who would found his action on a Public Statute must plead it for the plaintiff must state the particular ground of his Claim: but he need not recite the public Statute = Etc. Who declares upon or otherwise pleads a Statute when it is necessary also to recite it, need not recite it Specialiter: for a recital of the substance is sufficient. If a Statute is part public and part private it must be recited as to the private part but as to the Public part the Judge are bound to take notice of it ex officio: (But it is never necessary to recite the titles or preambles of

and

5 Coke 50 b. 119 a. 5 Coke 119 a.

* by availing himself of the Det. of Quare

Hob. 79 3 Salk. 211 " 303

2 Roll. Abr. 466 2 Co. 76 2 Mod. 57 Hob. 329

11 Coke 97. Hob. 229

any Statute for punishment constitutes part of the Law. But Foster says the knowledge of personal instruction ought to be incidental of the statute the foundation (i.e.) of the title or preamble.

But it was once holden that a mistake of the title of a Public Statute is not taken through inadvertence or by way it is. Yet this Mr Foster concerning ought to be taken subject to the rules already given = When it is necessary to recite a statute the party must give the date and the place at which it was made.

When a private Statute is pleaded the other may plead "Insult the record" for the question whether there is such a Statute is a question of fact and to be tried by a jury. But "Insult the record" can never be pleaded to a Public Statute for this is not a matter of fact and it can not be tried by a jury but the Court are to determine whether there is

3 Coke 35. 4 Rep. 655, 658

2 Ld Ray. 847. 6 Mod. 12.

5 Rep. 67. 2 Bank. 246. Cro. Jac. 211. Cro. Eliz. 232. Comyns 474

8 Co. 58. 4 Co. 76. Cro Ed 352. 2 Mod 57.

is such a Statute or not — it is declaring upon Public Statutes, the Plaintiff must plead them, but it is not necessary to count upon them: To plead a Statute is nothing more than to state the fact, which comes within it. In this rule there are three exceptions 1. If the party has a remedy both at Common Law and upon the Statute, he who would found his action on the Statute must count upon it: otherwise it will not be known that he intends to found his action on the Statute: Fine and many cases of this kind. Bacon in his title of Pleadings lays down the contrary rule.

2. So in Actions founded on Penal Statutes, though they are public still the plaintiff must count upon them: the reason of this rule is unknown to me. Fowler, though still he may counsel and coin.

2 Burr. 503
1 B. & P. 38
Cro. Ele. 601
Carth. 482

2 Hawk. 356
1 Term. 230
Lut. 584
4 Bac. 18
Contra

2 Hawk. 306
4 T. R. 502
2 East 333
Cleve. 206
Cro. Ele. 38
1 Cont. 153
1. Bac. 38.

Municipal Law

1 Wm 652
19 Vin 394
2 East 334
Salk 536
2 Ld Ray 339, 341.

3. If a public Statute gives a new form of action unknown to the Common Law it is necessary to count upon it, if the plaintiff would ground his claim upon it. This is the case when a new species of action is given. But when a Statute declares and the remedy or action is new case it is not necessary to count upon it. In enlarging and public Statutes which are remedial or beneficial the general rule is that it is not necessary to count upon them. Likewise when the Statute does not entirely give a new remedy at all it is not necessary to count upon it.

1 Ban & Ald 331
19 Vin 393
1 Ld Ray 445
Dyer 83
4 Mod 655.

Salk 582
2 Ld Ray

If an Statute prohibits an act, and another inflicts a penalty on the violation of it, it is necessary to count upon both.

19 Vin 395
1 Com Dig 235
1 Ban 235
1 Ld Ray 655

Where there is an offence against the Common Law and also against the Statute you may in the indictment lay the offence at Common Law and also upon the Statute: but it must be done in two

counts

There are many
an offence at Common Law which is al-
so made an offence by Statute.
If a temporary Statute be repealed and
is continued by a perpetual one, (not
law) and the former one is sufficient.
If the words "against the form of the
statute" are inserted in an indict
ment for an offence at Common Law
and not by statute, such words though
useless will vitiate the plea: they
are considered as mere surplusage.
If a Contract good at Common Law
by parol is by Statute required to be in
writing: still it is not necessary to declare
that it is in writing: the evidence must
show that the Contract is in writing.
Such a Statute introduces a new rule
of evidence and not a new rule of pleading.
But if such a Contract is pleaded in
bar to an action, it is said to be necessary
to aver that it is in writing. First it
writing

Leach 400 n.
2 Str. 1255

1 Rac. 630
656
Str. 88 1056

5 Mod. 162 n
8 Dr. 367
" 363
2 Hawk 225.
Sp. 112 116

7 Lecture
11 Jany 1812

2 Mod 340
Salk 279
2 Bur 1890
H. Bl. 180 n.
" 180
Bank 28
Rob. in 1219
200. 201
Stat 29-8
2 Rd 116

writing is necessary to the validity of a contract at Common Law, it is necessary in the pleading that and the contract to be in writing. Thus a contract of affreightment at Common Law must be in writing, and in the pleading it must be averred to be in writing or the plea is bad. But when a statute makes writing necessary to the validity of contract which contract is unknown to the Common Law, such a contract must be averred to be in writing, as the case of a sale of lands. In pleading statutes, the exceptions in the enacting clause must be negatived by the prosecution and an omission to do it vitiates the pleading: But an exception in a derived clause need not be negatived by the plaintiff. The defendant may take advantage of a proviso or exception in the enacting clause as the prevention of the plaintiff's right of action but exceptions in

2 Pick 376
Esp. D. 265
6 Co 38 a.
Sarth. 45
" 279
" 383
Dr. Ch 249

Cowper 202
Doug 240
5 Bac. 556
Salk 395

1 Wms Saund 234
Cro. Car. 153
5 Mod. 83
6 Mod 27
" 304
" 342
Salk. 445
Cowper 314
1 Burr 334
Com Dig. Abatement A. 2

in the district court to enforce a claim do not go to the exclusion of the other or right, * (where there are two concurrent remedies in the same case, one by common law and one by statute either of them may be pursued = In cases of this kind of the plaintiff pursues the statute remedy and through want of evidence on the trial can not recover, he cannot bring an action, he may in the same suit recover upon the common law rule on the same and this proceed to have either in a civil or criminal action, even though he should not upon the statute =

(* that which is new of course at common law is made illegal by a statute and a particular mode of proceeding is prescribed by the statute that mode must be pursued and no other will answer

But this rule holds only in two classes of cases, 1st where the particular mode is prescribed in the prohibitory or penal clause

though

* but is more matter of inference for the court

2 Black 300
2 Cranch 250
2 Bin 399
8 Cr 603
Sedg 8 D 8
Comb 64

2 H.B.P. 100
Bacon 21
2 D° 300. 350.
Salk 9. 12
5 Rep 14 Cl 149
5 Coke 90 +
Co. Lit 75 +
337. 801 +
2 Hale 171 +
191
2 Ch Hale
Ed. 168
Contra
vide author
they marked +

Co Jac 1 Ch
Sedg 15 n. 48
4 Co 36.
2 Wm. 815
803. 830
4 Bin 2323

evidence, so that the mode is incorporated with it. Where there is no positive law or usage but the statute says, who-soever, or they or they shall be punished so or so, there is no offence created by the terms of the statute. But where the mode of prosecution is prescribed in a-

1 Bac. 554
2 Hawk. 302 note
2 Nich. 200.

bsolute affirmative or else the rule does not hold and this is generally the case if that which is prohibited by the Statute was also prohibited by the Common Law, and the Statute prescribes a new mode of prosecuting, still the mode of prosecution at Com. Law is not precluded the Statute is only an accumulative remedy. If a Statute creates a right or

2 Bac. 830
Ibid. 832
2 Hawk. 302
Ibid. 200
205

offence and prescribes a remedy the Common Law will follow and

1 Bac. 554
6 Mod. 96
12 Mod. 592
Ibid. 518
3 Co. 290
Dougl. 160
Co. Litt. 76 a
1 Bac. 553
Cro. Ch. 155.

It cannot be questioned if any Law or grounded on a Statute or Statutory is an offence at Common Law and the individual name not mentioned ought not to

Concluded. Continued from page 56

The Mode of Proceeding on Common Statutes.

It is a general principle of the Common Law that a public offence is not to be prosecuted by any individual in his own private capacity: for the public is the party injured and the remedy belongs to the public. The Statute Law may make an individual to prosecute for an offence done to the public, but this is in the nature of a penalty. This practice has never been allowed in Connecticut. In old England common private individuals can and do frequently prosecute offenders and informers: but this is in the nature of a penalty, in information on the part of the prosecutor: which is generally done to recover his costs or damages.

There is a species of mixed prosecution partly private and partly public from the

Folio edt. 56 Chap. 4 B.C.L. 2

Lynch v. Com. 2 Ch. 33. 225. 228. 235. 239. 250. 2 Ch. Rep. 4. 100. 108. 205. 3 Bro. 158.

parts.

partly in the name of the King and partly in the name of the Subject which is called a qui tam prosecution: it is an action or prosecution Sui generis.

* A qui tam action and a qui tam prosecution differ in this: the first is a Civil suit and the cause of Civil suit must be presented and proved: the party may appear by Attorney but the latter is conducted by Criminal process and of course the prosecutor can not appear by Attorney but must come in person personal = A qui tam action is carried on like a Civil case and a qui tam prosecution like a Criminal case: Such Actions however depend upon the form of the process: Any qui tam action brought by an individual to recover a penalty is a Civil suit. Qui tam actions are not usually universally founded on Penal Statutes: they are now confirmed as were Upstanding of the Penal Statutes

Q. Bank Cas 1 Cur 84 3 Bl. 60. 1 Do 308.

* Qui tam informations may be either by Information or Information.

3 Bl. 10. 4 Do 3 58. Scott 380. 1 Black 36 38 3 Do 248 4 " 257. 3 Wils 148. Bac. 149 pl.

1 Bl. 5 1 Do 108

Hob. 87 Dr Sanders Bac. pr in 30 case 1 Bac 30 2 Black 3 Do 3 Do 3 Do

And in the case of a qui tam action the Statute of Profaits justifies and encourages the prosecution =

There is also another species of action founded on Penal Statute, called a "Popular action" which is frequently tho' improperly confounded with a qui tam action = A "Popular action" is one that is given to any individual who thinks proper to prosecute and recover a penalty incurred by the violation of a penal Statute and whether the prosecutor receive the whole or only a part of the penalty the action is still "Popular" = A right to prosecute qui tam is frequently given to the party injured only: If the whole penalty is given to the party who will sue for it in a popular but not qui tam prosecution a Statute prohibits and commands a thing for the benefit of a single individual he may have a remedy by an action founded on the Statute for an injury occasioned by its violation

8 Lecture

3 Burr. 3744
3 Atk. 160
2 Ld. Ray. 454

1. Roll. 37. Contra.

Com. Dig. 320
Doe v. Pitts
6. Mod. 264

Com. Dig. Action on Stat. A. 1 Co. 130. 1 Co. 99.

If an individual is injured by any offence prohibited by a statute he may have his civil action on the statute —

When a statute infects a penalty for injuring any one of his rights and does not appropriate the penalty it is given to the party injured and is to the injured

Etc What are Penal Actions, must be brought —

Cro. Jac. 12. Cro. Car. 87. 2 Lev. 60. 1 Ld. Raym. 222. 2 Str. 878. 2 Burr. 874. Comyns Dig. Action on Stat. B. Foliot edw. of Hawk. 9 Vol. 205.

If for an offence immediately injurious to the public a statute gives a penalty, and part of it to him who will prosecute for it, and forbids any prosecution for it, and bringing an action for it — As where the statute prohibits the exportation of wool, and this does no injury to the individual yet for violation of that statute any person may prosecute the offender qui tam &c.

When the offence is immediately injurious to the public only no individual can prosecute as a common informer unless the penalty or part of it is given to the prosecutor &c.

Cro. Car. 87. note. 2 Black. 374. 2 Lev. 60.

If a Statute prohibits an offence immediately injurious to an individual, he may have a civil action, though the Statute does not expressly give the party the penalty or any part of it: or though it does not provide that he shall recover his own damages: this rule is not well settled though Mr. J. Ad. thinks it is good Law = When a penal Statute expressly gives the whole penalty to the party he need not sue for the penalty but may sue a fine = In conformity to these rules, civil actions are given in Connecticut in case of theft, forgery and many other cases. When a fine is given to the crown and a civil remedy to the party injured, the fine may be inflicted of course and the ~~[illegible]~~ knowledge of the offence in the civil suit. This is only by Common Law. It has not hitherto been the usual course in Conn. Where no form of action is prescribed for the recovery of Statute penalties the action

2 Frank 3[illegible]
1 Rac 3[illegible] 379
4 Co. [illegible]
2 Co. 54
Co. Lit. 54
Com. Dig. title Pen. on Stat. D. 1.

2 Bent. Dig. 2 [illegible] title "Action" upon Stat. D.

Bacon. 5[illegible]
2 Bac. 3[illegible]
Do. tit. 11
Sach. [illegible]
5 Bac. [illegible]

* off to the mode of recovering penalties in Statutes, the Editor —

d

[illegible] of Salt is the usual action but it seems
[illegible] Sherwood will lie: only Tender plea
[illegible] this has been held a good action and these
[illegible] a pecuniary incentive thereof plays
[illegible] the action of Assumpsit seems to be a strange
action to be brought on this occasion but it
is founded on fiction - if the Indians
mean as they say in the place provided much
And he is confined as having provided
by this, when he violates the law: there is
a kind of parity of treated raised between
the Defendant and the Complainant.

Other-part of a penalty is given to the King
and part to the Informer the reason of the
repeal may perhaps the only provide: it
is the same in the United States, provided
[illegible] a side commission on
[illegible] on a qui tam prosecution is
a bar [illegible] prosecution for the same
[illegible] [illegible] shall be tried twice for
the same offence - There may be a second
[illegible] prosecution as contended by the Defendant

of the offender. and here if the action is qui tam this will be no bar to the second prosecution. the penalty of a qui tam prosecution may be pleaded in a bar upon a subsequent indictment for the same offence. in point law it is said it may be pleaded in bar. but this incorrect. a person obtaining a penalty under a popular statute has no right to the penalty till he has commenced the action or prosecution. the commencing the prosecution is requisite an inchoate right and this right is consummated by the judgment. But here the offender may release the whole penalty by a bar of a record before there has been a trial. the case of a remedial statute by otherwise for here the party so found at the injury is deemed has an inchoate right to compensation & damages for the injury. after a qui tam action is commenced the offender cannot take away the right of the prosecutor to the penal

+ 1 Ld. Raym. 41
+ Cro. Eliz. 96
+ Cro. Car. 209
3 Bac. 1425.
2 Black. 290
3 Co. 39 a.
1 Bac. 97.
2 Str. 1090
1 Burr. 65
2 Saunders 38
2 Bl. Re. 1055 ca. 4 34
2 Bl. Re. 1055
3 Bac. 1425
2 Leg. Wilk. 311.
2 Lev. 191.
Doll. Blk 3.
3 Bac. 1425
Doll. Blk 3.
2 Saund. 38 a.
1 Cro. 65

penal

6 Ed. 6. c. 38. 18 Eliz. c. 5.

forbad the prosecutor from proceeding to execution: but the statutes released the grand jury's right to the penalty only, and provided that Parliament could release even after the commencement of a suit: but Parliament thinks this can not be done consistently

2 Bl. C. 438

Parliament doubtless is done by a repeal of the act. Where a statute gives part of a penalty to the party aggrieved, the King can not disclaim the party's right thereto before the suit is brought.

2 Inst. 58. 2 Bac. Abr. Tit. Informer. Cobbett's Case 5 Co. 76

Before the statute was made to the contrary the prosecutor could release the part of the penalty after the conviction in a popular action. But the occasion upon prosecution for the conviction to prevent a second prosecution: It is provided by the statute 4 Geo. that no conviction

2 Bac. Abr. Tit. Informer. 5 Co. 76

in a popular action shall be a bar to any other prosecution for the same offence, and that no release either pending the action or after conviction shall

in a very varied state, but by Common Law principle a strong presumption will be made in favor of prosecution on prohibition on the ground of fraud. Therefore that the Statute of Mary ought to be affirmed of the Common Law for the first proposition is true.

But from grounds related by the Learned at the conviction or judgment would not by Common Law bar the King from prosecuting for the offence of the Bankrupt. Now by the Statute 18 Elizabeth the prosecutor may not commence the prosecution at all but the Defendant is arrested and bound over to answer without leave of the Court under pain of the Outlawry. If the plaintiff in a popular action dies, without leave of the Court or suffer a nonsuit the King may still proceed in the name and in initiate a new prosecution. If several persons are convicted together in a popular action for violating a Statute only one pay

Ante fourth Common Law rule, Dw. 395 & Bacon Ab. Vin. Ab. title "Penal"

Co. 5 Rep. 16 a. 2 Mark. 391.

Stat. 18 Eliz. c. 5 sec. 3. 2 Burn. Just. 18. 5 Black. 98

5 Black. 98. 2 Burn. 3 b. 1 Wm. Black. 396. 3 Ab. 55.

is recovered. But if they are prosecuted by the Prince or publicly each one pays the entire penalty. In the former case the penalty is considered as a debt and they are joint debtors, but in the latter case the penalty is inflicted for the crime or offence as a punishment, as each one is guilty of the crime each one shall be sentenced, provided that it do not involve no police prosecution for the offence.

Cf. Digest. Lib. 48. Tit. 19. Sect. 16. Cap. 1. Lib. 9. Pauli Sent. Tit. 31. Cap. 31.

The Offence may consist in a number of facts, so one fact may constitute a number of offences. Where several acts constitute but one transgression of offence, there can be but one penalty. In similar instances, if the Plaintiff is entitled to recover, they are entitled to the same indemnity. But when the party injured prosecutes, only he is entitled to sue as in other cases of action.

The Editor (Cap.)

Cap. 1. Lib. 9. Pauli Sent. Tit. 31. Cap. 31. Lib. 48. Tit. 19. Sect. 16. Digest. Lib. 2. Tit. 1.

Lab. Rem. Opp.

Arrow and Hence

1st Below
1st May 1812

Test will is confirmed the right which the Husband acquires to the personal property of the Wife.

1. Concerning that in possession and
2. Not only any action

1 The personal property of the Wife in possession either money furniture &c. The Husband at the time of marriage receiving an absolute title to all her personal property in possession in the same manner as if he had purchased it with his own money. The property is transferred the instant the ceremony is ended and cannot be taken by the Wife against creditors either by title or the death of her husband. The personal property of the Wife in possession on the day of the death of the Husband vests in his executor and not in the Wife; and this is done by operation of law. And there is something peculiar

Co. Litt. 351
Doe & Stevens
Dis. 1. Ohio

at

Parson and Feme

attending the transfer for judge Second may be known of no other transfer which is good that lands to defraud Creditors: the transfer in certain cases may operate injuriously against them and they can have no redress. It must be noted how they can hap-pen when the Husband is liable, I said he daily of his wife's Amount to somewhat that the Husbands liability to pay his wifes debts ceases no longer than during Coverture consequently if the wife survive the Husband yet the debt the creditor never can recover it from the Husband. If the Husband die before he has paid the Debt the Creditor must sue and recover it from the Executor.

But in the last case provided the Wife has other property which dies not vest in the Husband the Creditor can recover it out of it towards his Debt

3 Bl. 4 ca. Salk. 124. 1 Ch. 1 d.

The Husbands liability to pay his wifes Debts does not debend on his receiving pro-perty, hence he is liable notwithstanding

Bl. 3. 139 3 Mod. 186.

receive

receive, sing or not. The husband is never considered as a debtor to pay the wife's debts, for if he was he would be liable to pay them after her death or after his death by his executor would be liable. The wife is considered as the debtor and this for this reason that the debt pursues against her and her separate estate. It may be a first charge on the separate to be used at all. How the husband must be sued with the wife in case of the wife's debt contracted before marriage:

On the ground only they must be joined in the suit, judge Marcer conceiving to be thing. The little strong Dalton, must be used and by marriage she is deprived of her separate estate. If it was commenced against her alone, the judgment must go against her alone. And she must be imprisoned and remain in prison till her husband is willing to pay the debt. Now you and not [illegible] and without the other, on the part of the wife and husband are in at liberty

[illegible]

the

Found and found

the other must be alone

2. If the husband right to the wife

Other is actions

These rights in action are merely personal

rights and it will prove to have been the Civil

law & other uses therefore that they

right to transmit and ~~[illegible]~~ as to are

personal probably the reflection: but it is

as if the capital of them can be sent abroad

therefore. But they are not vested in absolute

property but only a right to have pur-

ce sued & that to be in his own name

Blackstone Comm. 45 [illegible] in the name of his wife: and when

collected they are absolutely his and go to his

executors = there was a question formerly

whether the husband had an interest or only

to collect them & if not before the money

actually came into his hands he dies

that the court said it was plain he

had a right for the husband & good

reason and that was confirmed

if he had in his life time they might go to the

[illegible]

Brown and Tone

Trustee as Trustee only and not as his property. The Husband gives a sign there ships in action and on the assignment of policies and the assignee has a good title to them. This assignment must have under-stood a valuable consideration seems to be in common sense. There is no gift away without consideration. If the Husband has not sight of her ships in action during coverture he can never do it at all. He cannot bring them merely by will. Therefore if he dies before he disposes of them they go to his wife as if she is dead to her representatives by the Common Law. There is a statute on this subject in England which will be no bind directly. There is likewise a peculiar Equity on this subject. An Equity they can order the Husband as a purchaser of the ships in action when the Husband has made a competent settlement on the wife before the marriage. Now this settlement has nothing to do with a fairness

V. 1 Ch. Ca. 64
2 Ver. 207
Wms

for

Parson and Parson

on that in lieu of Thos Parson

of that where a contract settlement of

Parson's marriage the husband is entitled

to the life estate, & the wife's real property

should descend to the heirs of their joint

issue, and they do not purport there only, how

the children to get it if the wife dies in not

in being, nor in her life, but it is in the heirs

of her issue, and the children of it and every

thing and refuse being, unless the wife mentioned

should survive, or her life either out of

that or in view the issue. (Put they have

Dyer 60 b
3 Co. 18
Cro. Eliz. 175
Sty. 399
3 P. Wms. 302
Cottle & W. 179.

been sued with the wife when the wife has

come into Court and consented to a transfer of

her estate; yet in this case it must appear

that she acted freely. But good have the

based cases for the defendant and against the

principal case the Court exercised a discretion

[illegible] that wife and children were to

be [illegible] if she had a separate fortune for her sepa-

rate use, it seems it would be unlawful with

[illegible] provision for her without her

consent

a settlement of land in any manner that the wife will not have a mere bare trust. The chancellor, if a married husband already in the state of the husband himself, and must therefore provide for the wife of his brother, not the husband. If the husband had assigned the chattels for a valuable consideration it seems that Equity will not compel the assignee to execute the provision for the wife.

I have been long Judge Reeve's opinion of our common law, as stating that where the legal title is in some other person, except the husband.

I have also sometimes the judge's been opinion of our common trustee: but notwithstanding the trustee is willing, a court of Chancery will not interfere to prevent it, and if the husband has a legal title he may obtain these chattels without paying any consideration.

It has been observed that if the wife dies before the husband, he would be a trustee

Sel. Ch. Cases 18
Sir J. Mitford 20
Ib. 38

18
Sir J. Ch. 81.
Dr. Blackburn
Stronge v. Hartigan

Sel. Ch. Cases
Ib. Dorchester
Ib. Clayton
2 Ch. Ca. 85
3 Ch. 11

2 Atkins
Ib. Mary
1676.

Trustee

Commonwealth v. Fox.

recover. I may here add, that it is settled that the husband is the rightful accounting trustee of the wife, and cannot collect her choses in action in his own name, the surplus belonging after the husband has paid all her debts will go to her representatives. But in Eng. and by Statute 22 Charles 2d the husband is not allowed to account for the surplus if it be owing. It follows then that in those states where no such statute exists the common law rule governs, and they the husband being administrator must distribute the assets to the wife's relations or representatives. There is no such statute in Massachusetts, and in New York there is one. In the Equitable chose, the husband has the same right to them, as he has to the wife's legal assets.

4 Bro. C.C. 31. 1 Roper on Husb. & Wife 8 ed. 188. 3 Atkins 95. 1 Ves. 158.

For a historical account of those persons who are capable of administering on an Intestate's Estate, see Principal Authorities cited in Dr. & St. 351. 2 Saund. 8th ed. 886. 871

2 Ed. Ed. Stat. 1 Ch. 19. 1 Kent's Com. 3 Ed. 2 Ch. 2 Dr. & St. in Dr. 71 to 80

Fourth Point Farther

Now will we consider the Mortgagee
right to judgment obtained in his own
name and in the name of his trustee when
is such a her chose in action

Whether a judgment is obtained in his own
name and in the name of his wife Tenant
Debt due to the ~~the~~ wife and the Mortgagee
Dec. before the collected and before the wife the
judgment belongs to the wife and if the wife
die before he collected it belongs to the Husband
Now it may be asked upon what principle
this Rule of the Chancery is founded
not as administrator for he not collected
recovered in an action to the such as it equal
right to Husband and administrator to be joined
the reason of this is that the judgment is
just one in the possession of joint
tenancy it belongs to the Husband by the
survivorship that gives it to the Husband
consequently he should be joined the
principle of survivorship does not exist the
Husband and wife the judgment also

Judg. by
3 Ch. Rep.
p. 307

Farrar and Fenn

as a Bankrupt but only as an administrator of the wife's estate that it will be optional hereafter for her Debtors in many of the States the Doctrine of Survivorship is entirely exploded: it is in Connecticut in Ohio & other states where it has not been so it would be a satisfactory proof of payment as it is stated in cases of joint creditors nevertheless the Husband has a right to attach the fund mentioned in the Will: in Illinois he must account for it and as administrator it will be safest in his hands to pay the Wife's Debt & hand over the balance to the Husband without the Wife's consent in actual pecuniary concerns - But if the Wife happens to die - the Husband can receive this only during the term of his marital rights - during coverture - and the rights of Husband are merely in the Husband and not transmissible to an incorporated Society - Debt will be considered

Baron and Feme

The right which the Husband has to the [illegible] chattels real [illegible] from [illegible] chattels [illegible] [illegible] generally [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in this Country: He has the same power to dispose of them that he has to dispose of her chases in action: since they are also liable to be taken by an execution for the debts of the Husband 'Tis otherwise in [illegible] of her chases in action; [illegible] on an Execution can not be levied on them. When these leases are taken in an Execution the title is transferred from the wife to the Creditor. But a right of the wife [illegible] of them nor are they taken in Execution then the Husband [illegible] the enjoyment of them and the avails arising from the enjoyment of them [illegible]; and if the Husband dies without disposing of them then in that case will go back to the wife the chases: And if the wife dies they go to the Husband not as her administrator but absolutely. [illegible] in cases

of

3 Lecture.

Co. Litt. 300
46. 301
Rol. 344

Co. Litt. 300
46. 301
Roll. ab. 310
3 [illegible] 345

Parol and Force.

Cowper 34
Co. Litt. 18 b
Plow. 240
Co. Litt. 29 b
Co. Litt. 29 b

of a lease for years on the death of the husband as to the husband an administrator. But he is in these cases, real as his wife the only the lease for years term mortgaged the family of redemption belongs to the husband on the death of his wife. Now it may be asked how the husband should be entitled to this lease for years upon the death of his wife in the present case by virtue only of the marriage contract. It seems to be a mere fiscal law. But it is contended by some that it is upon the principle of joint tenancy: the case so in the case of a lease for life: but this is not true for in order to constitute a joint tenancy the title must commence at one and the same time & be, moreover, held by the same right and it must also be created by act of the parties. Here this is not the case in respect: consequently there is no unity of interest. The husband holding the lease on years after the death of his wife is

Co. 3
Cowper 252

Baron and Feme.

in this Country, the same as in England for it does not depend on the ground of joint Tenancy. The Husband can not devise away his wife, these leases for years or chattels, real of the wife: though judge Kent supposes that a lease of land to commence after his death would be good. The Husband may leave his wife tenant and if he should die the rents & profits go to the Executor = The wife would have the reversion: and if this should stand why does she not also have the rents, upon a rule that the rents shall follow the reversion? It is answered that rents follow the reversion in each of a freehold but not in each of a chattel real. consequently she can not have the rent though she has the reversion = There is one case in which the Husband can not have it, by where a feme sole owned a chattel real and married before marriage: now in this case if the husband die before the 4. Man ment.

Co. Lit. 98.
Co. Lit. 3.
Hawes 340.
Co. Lit. 30.
Cro. Eliz. 344
Bacon 118.
Co. Litt. 118.
Co. Litt. 305
Co. Litt. 3.
Co. Litt. 6. 8.
Fearne 8.
Bacon 118.
Co. 4
Co. Litt. 256

Baron and Feme

[illegible], the debt is before he reduce it to possession he can not hold it on the ground that the person must be one in order to have his property defend[ed]; but it must go to her representatives.

6. [illegible] 30.
2 Show. 282.
2 [illegible]
[illegible]

The wife may have been possessed of chattels real as in reversion before marriage. In this case the Husband gets nothing by the marriage.

[illegible] Lecture

Next will be considered what interest the Husband acquires in the Real property of his Wife at the time of marriage i.e. in her lands or any Estate of a Real nature. On the marriage alone the Husband acquires the use of all freehold Estate either in fee Simple fee tail or for life, during the Coverture. The use of her Estate belongs to him for life and if nothing but marriage is in the case, on the death of the wife he is at an end as to the Husband for he can in that case get the [illegible] at death of the wife. Since the wife

Co. Litt. 351.

dying

Baron and Feme

During the coverture has no other interest in the Estate only, it is a question whether she remains in this confequently if there is an injury done to the Inheritance as by committing waste &c is an injury done to her and she must be joined in the Suit: but if there is an injury to the use only as by injuring the rent, she is not to be joined. Now what has just been mentioned is true during the life of the Husband: but if the Husband die and the Wife continues alive she then becomes the sole owner of the Land: but if both at the time of the Husbands death have had children they are considered to be heirs property and go to the Eldest as his heir. Suppose the Wife die in her Husbands life time: then her next heirs entitled to her Land and the Husband has no interest in it at all

to Children

Brown vs. Paine

Then far has been confirmed what the Husband acquires by the marriage must he mean have an Estate beyond the which is rather an Estate to the Husband

In order to enable him to this Estate he must and has a Child born alive by his wife to enable him inherit it. The wife in this case must have been actually delivered in order to enable the Husband to take by the Curtesy.

And the Husband will take this Estate by the Curtesy during his life and on his death the Lands will pass in the same manner as if no child had been born. Upon the reason of the element it is not necessary to have any child born in order to enable the Husband to take Estate by the Curtesy. and as the Lawyers in Connecticut in Stockbridge under the Charter a question might have arisen at some former period whether a Husband in Connecticut had

Law

Doran and Fenne

have been entitled to this Estate without having any child. The Common Law has prevailed and Judge Kent emphatically it is now too late to make this question. It was formerly made a question whether a man could be made a Tenant by the Curtesy in a trust Estate: as where an Estate is given to trustees for the use of the Dispon. and the heirs and heirs of the body. but it is now settled that he can not be a tenant by the Curtesy in such an Estate.

Doe v. Phillips 2 Ld Raym 1457 Doan v. Phillips 87. 3 Burr 1505 3 Ath. 132 Lewis 657 3 Atk. 147 1 Ves. 208

If a man marry a woman who has begun her Dower but such a wife will have the rent only for he can not have the esp. since the wife is entitled to it. and if in that esp. the husband die and there were arrears due on Annuities they go to his Executor. he Dies and has the rent in lieu of the esp. and on his death the rent will go to his Executor. But if there was rent in ar-

Co. Lit. 29 note 23

Dean-

Dower and Tenure

Before Coverture the wife on the husbands death as any other widow, the English law gives it by prerogative to the Widow by Statute. It will need be considered what portion the wife has out of the husbands Estate on his death: this varies first in the Archdeaconry records in Dover and thereby the pointed. The wife may also gain some advantage by the marriage. When the Husband dies intestate the wife is entitled to one third of his personal property if he has children, but if he has no children she is entitled to one half of his personal property after his debts are paid. But this personal property may be devised away. There is no species of personal property which is not in this predicament, and that is the Paraphernalia. Then Paraphernalia consists of the wearing apparel and ornaments. The second kind consists

Coke 300
Coke 302

4. Lecture

Ante p. 2 Pinel

Person and Estate

consists of her Ornaments Pounds or Jewels
Watches &c — As to the first kind they
never can be considered as his property
at all — they are not to be inventoried
and will not go to his Executor: but are
absolutely the Wifes property — Now Judge
Reeve conceiving she can hold only a
suitable number of them —
Concerning the second kind viz. Other
Trinkets &c: these can not be devised
away by the Husband they are not only
just to his Wife tho' he may take
them from her at any time during
Coverture but on his death if they are
not taken away before by him they are
in the Wife and the Husband Executor
can not take them but by their consent
or a deviance of assets in his Family to pay his
debts: for in such a case he may take
them: But they can not be taken for
the ~~[illegible]~~ Legacies or Bequest
tion of any kind but only for the pay
ment

Co Litt

3 Atk. 370.

Parson Dean Forbes

3 Atk. 372 — Personal Debts are Crediting

Stockfield & Husband filing no Bills

were said Dep. And then Stories had the

aid of the personal property to discharge

3 Atk. 395 — them and the Stories is preferred before the

other on the Bankrupt = Leasehold Lands are

Devised & paid Debts if the Paraphernalia are taken then will stand upon

Creditors and must compel on Sale of

the Land to satisfy them

2 Ppr. 80 in a note } 1 Atk. 359 } 1 P. Wms. 729 } 2 Ves. 544 — Paraphernalia are taken prior in Priority to other

Creditors but Subrogation to Voluntary

Creditors of the State the Real Estate

constitutes a fund for the payment of

Debts but the personal must first be

exhausted = this being the case a question

may arise whether the Utility Liza

bilitation could be taken to pay Debts

until both the real and personal totally

were exhausted, and [redacted] it

could seem upon principle that they could

not

be taken before debts and Personal Estate are exhausted – On this question we find no precedent. If we consider real property in this state, where it is liable on payment of Debts, similar to real property in England when devised for the payment of Debts, it is certainly must be taken and exhausted before the Compensation can be taken: Page Wood concedes that the real property must first be exhausted

Dr Lecture

The wife also on the death of the Husband becomes entitled to an interest in his real Estate and this interest consists of one third part of all his freehold Estate in fee simple or fee tail ~~expectant~~ held by the Crown and if married be one third part for life in a dower Tenure: This Estate is called the Widow's Dower – The Husband can not defeat the Wife of this Estate by deed or conveyance during his life time unless the

Dr Mr Hall

Part of the Force

hope, since in the Convention it is notorious
evidence that there should be an actual
Creation of the Freehold to entitle the Lessee
to the Power of right to convey Dower
free claim is a Fiction. Clearly in order
to entitle the Freehold to his Estate, by the
Custom, Dower further it must be made
an Estate, as her's upon if she had had
any issue had inherited: otherwise she
can not be endowed: Now you will re-
member that it is not necessary that if
one should be actually born, as in the
case in Cutting: But the only enquiry
is whether a Child could have inherited
if such one had been born: Now this
Point can be settled in a few simple
Words but in a Process intail would go
well if not always: This Estate of
Dower is not only out of the power of the
Husband to wife away but it is out of the
reach of the Creditors if they take
the land they will have it with the

Power and Trust

incumbrance of Dower upon it. Creditors to be sure will have it after her death in the same manner as it will after a Sale. So that there is this difference between the Husband's Trust and Personal property in case of Debts, that the latter affects it in the hands of the Husband: but in case of the Property to his creditors against personal property is liable to be taken for the payment of the Husband's debts, whereas real property is not. By the Common Law the Heir at a certain given period is obliged to assign, after the death of the Husband the Widow her Dower and it appears he is compellable to do by a general process. The Statutes in the different States have made some small alterations on this point. The Connecticut Law gives the Court of Chancery authority in certain cases of Widows to set out the Widow's Dower by metes and bounds

and

and a confirmation to the return of his proceeding to the Court of Probate giving the title to the land for her life: and appeal lies from the Court of Probate to the Superior Court of Connecticut and the wife is entitled as her Dower only to one third part of the clear estate of which the husband died seized, and not of one third part of the he was seized of during coverture.

Dower may be turned in power of appointment. Lands paid in Dower may be turned by the husband's bona fide alienees. Mere aliens can not in law carry at all. This then presents simply that when an alien purchases lands and is permitted to hold them, it being positively ascertained that he is an alien, and also aliened of land in order to escape the wife's right, not land, nor Dower out of them go an alien can hold no lands and they are liable to be taken from him as any land prior to his decease. Dower may also

be barred by an Elopement of the wife with an Adulterer: & it be proved this her right to Dower is restored — if the Husband receives her again and treats her as his wife.

Cro Litt. 37 & Co 1. 2

But the most usual way of barring Dower is by settling a Jointure on the wife: — Now this jointure must be settled upon her before Marriage, when she cannot be supposed to be under any over-awe of the Husband: since she cannot be supposed to agree that it is in lieu of Dower. This Jointure must consist of real property; it can not consist of personal property: it must be either for simple fee tail or an Estate for her own life: it must also be so created that she shall be entitled to the enjoyment of it on the death of the Husband — It again the jointure must be a competent livelihood and generally it must be proportioned to his fortune and her parentage in life. Should there arise any

any dispute as to the constitution the Court are to determine this Jointure must be considered to have and not to trustees in use for her? There is a general rule that after a person has once made a bargain & contract, & can not perceive it, or have and relief afterwards it must prove to be a very bad one. But if the Lifer has made an improvident bargain concerning her jointure the Court will in equitable cases contrary to the general rule relieve this Contract and give her Dower. And this is founded on reason for the wife is not conscious in a situation to make a good bargain at the time of marriage. The Court will therefore relieve her.

It must be expressed in the jointure that it is in lieu of the Dower for otherwise it might be considered merely as a pecuniary settlement which in no case is Dower & Jointure is sometimes settled on the wife after marriage. There if there

1 Atk 88.

there were articles of agreement entered into by the parties before Marriage that a Jointure should be made after the Marriage: then a Jointure made after Marriage in pursuance of this agreement is as good as one made before Marriage: If a Jointure is made after Marriage without any such agreement the Wife has her election either to take this Jointure or the Dower: But she cannot have both: An Acceptance of one of them consequently will bar her from recovering the other: Formerly the wife was endowed ad Ostium Ecclesiae with the personal property of the Husband: Now in these times she takes the personal property absolutely in the same manner as she does the real Estate in Dower: But this Law is obsolete: A Legacy given to the Wife may bar the Dower but it must be expressed to be in lieu of the Dower and then the Wife has her election either to take

Co Litt 18
2 Bro 345
3 Atk 630
4 Bro 41
Co Litt 36.

take the Legacies to take the Power.
There is one Practice which obtains in most of the States and which I have never conceived to be a good one, it is this — the Testator in making his Will says "I give my Wife one third part of the Property that I die possessed of during her life" without stating that it is in lieu of Dower. Now it ought to be observed that it is in lieu of Dower in the Will, for in strictness of Law this may be considered as a Legacy merely and she might have another third by the course of Law, bring her Dower — to be sure the Court of Errors in Connecticut have been governed by the Superior intending of the Testator and have allowed the Widow no more than the one third expressed in the Will. but Judge Reeve says he does not know how a higher Court would consider this. There is a case in the 3 Dallas 8. which has been supposed to be effected

to

to the general principle as to Dower. In that case it is clear that Chancellor King held that if a bond was given in lieu of the support of the wife it would bar her of her Dower provided it were a sufficient bond: now nothing more is necessary in this case than that the wife may have her election either to take the bond or her Dower: and that if she does take the bond it will bar the Dower & yet that she is compellable to take the bond: for clearly she is not. It has already been observed that the wife must join in the conveyance in order to bar the Dower & also she must join in a mortgage or it will not affect her Dower: the wife may redeem so if the husbands estate was mortgaged before marriage, the wife must redeem, and she can be entitled to Dower. When the heir comes to pay his part of the mortgage he must pay the interest: In such cases and mortgaged the wife must

Future

Dr. Lewis

Dower and Curtesy

[illegible] must pay one third and the Heir two thirds of the redemption. If lands settled in a jointure should be mortgaged the wife ~~jointress~~ may abandon them & resort to her Dower: or she must redeem them: and the Heir in this case must pay the whole of the money together with the Equitable interest, before he can take the premises.

A Wife can not be endowed with an Equity of Redemption neither can a Mortgagor's Wife be endowed with an Equity of Redemption: nor can a Mortgagee's Wife be endowed with the Interest which he has in the Mortgage. Now not giving the Wife Dower in the Equity of Redemption is certainly destroying the Symmetry of the
[illegible] Law and so did Sir Joseph Jekyll
in [illegible] he decided that she might be endowed of it — But this decision has since
[illegible] been overruled. This is a case in which Judge Reeve says he should not hesitate

to

I say from English decisions, for here they clearly there is no principle in them: Certain State Courts have decided that the dower may be endowed of an Equity of Redemption - The law of a Mortgage Mortgagor judge dower therein can not be increased through former's delinquencies and dissent can be conferred of a trust Estate.

Dower can not be to the prejudice of the Creditors

Would it be overturned the right of the Husband to the personal property of the wife which accrues to her during the Coverture such as Legacies, Devises, for injuries done Property? There are two different opinions held on this subject: one is that such personal property accruing to the wife during Coverture belongs to the Husband absolutely whether he collects before his death or not - The other opinion is that such property is the same as any other chose in action belonging to the wife before marriage and therefore if the Husband

Directed

Barnewall v. Fine

[illegible] it is indispensable it should be given early, so to the life or to the possession land out to the Executors: But they all agree in this, that the Devisee may possible a deed in his own name to recover such debts as accrue to the life during Coverture

In the cases in support of the opinion that there cannot be Survivor to the life in the Death of the Husband without entitling on his part: Marginal cutting blade for the other, giving the Wife that they belong effectually to the Husband, whether contracted in such and which judge Comyns seems to be the true Doctrine, quite the opposite Dig. 200. where there are cases cited to support the Doctrine. Something is a positive mistake which I have examined little if any at all: But first Review of the Cases are important Rule in understanding on this point: Pitt. Part. 1 Title Destroy the operation of the Devise

[illegible]

[illegible]

[illegible] on the other hand which [illegible] the [illegible] of the law to be correct.

There is in another respect an support of this opinion which is that the husband as is agreed on all hands may [illegible] his wife [illegible] and he [illegible] not join his life with hers to [illegible] and thus [illegible] is always the wife [illegible] always to be [illegible] of [illegible] brought a recovery by her [illegible] before marriage which will be considered the legal [illegible] the husband is to damages accruing from injuries done to the [illegible] before and after marriage by [illegible] the [illegible] Shaw [illegible] substituted of - The husband must join in the suit whether the injury was done before or after marriage - If all damages accruing from injuries done to her before marriage should be collected and if he collected

See page 20.

[illegible]

6th Term 2nd Cause

1 Brownlow 205 Cooke 300 Coke 80 on Jac. 501

Have damaged the Defendant they claim to have a liability if that on the death of the said Thomas Cook devised to the Defendant

If the expression Dying without Issue to be Dying after having Issue if so collected

expression 130 on Ch. 90 Salk 170

then but it is not so intended they provide to the Defendant if he due to receive to demand it is not such by Law

Out of this transaction of plaintiff and Defendant the Defendant refuse to satisfy the and has been already instituted Bill filed to recover Damages for an injury done to the Person of the Plaintiff Pending this the Defendant is entitled to another action in his own name for the Damages which he sustains in the loss of his Deputation and for injury done by an action of Trespass for and confirmed Against and for good direction of the Court as appeared which he must have been at in making and in this Action =

How these special damages accrued in this case do not appear to the Court but I have effectually to the Husband. It is also in some cases the Husband may have an special action in his own name against any person, who plan by his wife or by any words a great injury to him as in case he is an Heir Esquire and the reputation of his house belonging in a great measure to the character of his wife: if she is slandered it works an injury not only to her but to him also = The Husband is also entitled to all the property which the wife obtains by means of her talent or employ by means of which it becomes property the Husband has an interest in the labour and person of his wife and if any person seduces or takes her away from the Husband he has an the Husband has an action against such person to recover damages for the injury sustained.

1 Salk. 206.
1 Lev. 140
1 Sid. 346
Cro. Jac. 501
2 Roll. 170
Str. 954
1 Show. 97

But on the other hand the life tenant has no right to the fruits of the estate and does not therefore maintain an action for the loss of the fruits. There will be considered the injury and the remedy in case of mutual compensation with a Dam Lifter. The action to be brought in such a case is in form Trespass vi et armis: but in substance it has an action on the case for damages for the destruction of the life tenancy. It was held that there could be a recovery at all events: but it has lately been settled that if the tenant is prevented from the reduction of fruits that it matter and nothing can be recovered. Cf. Ward and Lefroy [illegible] Ch. 3

Cf. [illegible] Ch. 3 [illegible] 1 Term 180 [illegible] 85. 104

Plaintiff can maintain no action for injury done after the determination of the tenancy for [illegible] distress either a [illegible] [illegible]

[illegible]

take on his wife when living separate under articles of agreement. Judge Lawrence conceives he can: but Lord Ellenborough thinks not. —

In proving Marriage it is necessary to prove it in point of fact: by reputation is not sufficient. With respect to the damages in this case, the character of the wife before marriage must be considered: So also if the Husband keep adulterous concubines at his house, this will diminish the damages.

Bide Lord Audleys case, State Trials 1 Volume

4 Burr 2057. 1 B.C.R. 652. Doug. Bent vs Barlow Bul. N.P. 28.

The Power of the Husband over the person of his Wife

There is no settled rule as to what they power is: formerly the Husband had the same power over her that he had over his servants. During the reign of Chas. 2d. the wives began to be considered as worthy of better treatment than mere Slaves & since that time have been treated in a kinder and respectful manner. The lower class of Citizens in England still retain

claim the right of chastising their wives, they however, not to carry away a wife against her consent in the United States.

The rights of husband consist in having the right to the obedience and life both support and by the subordination and from separate each other. They will be enforced therefore in a court of law if a husband shall go away from his wife and family without a cause he would have a right to bring a bill against him. This was said that he may compel him as a servant to go back with his wife and also to prevent him disposing his property. But it is clear that the Court will not compel a wife to leave her friends & the place from the health of her husband.

Str. P. 875. 478.
1 Hawk. 180.
1 Sidn. 115.
2 Lev. 108.
Str. P. 1027.
3 Bac. 1622.
4 Bac. 1991.
Viner 834.

As the husband liability to pay the debts of the wife due from her before marriage and also his liability to support her debts and strongly considered that

before

and after Dowerture. It is her Duty to do everything they already been paid or they disbursed in the first Instance.

But the Husband seeing Leave to pay all the Debts of the Wife incurred before Coverture, the Law has the same remedy = His liability lasts no longer than during the Coverture: if there are debts due on the Wife's Bill, before the Wife are paid to discharge the Husband and his Executor = This liability does not depend on the fact whether the Husband received any thing with the Wife or not: Consequently by their operation of the Creditors may be obtained of their just Dues = The two principles which the Husband is made liable to pay the Debts of the Wife is that a Wife can not be sued in a Civil Suit without being joined with the Husband: Neither can she be imprisoned upon her Husband's with her in Civil Actions = Of the Dower

1 Roll. 351.
3 Bro. 184
Toll. Ex. 143
3 P. Wms 442

and life are unknown and the Husband dies leaving Issue the wife cannot be discharged = If he is not to be found she cannot be interrogated in open Court as against the Husband = Feme is no safe in which the wife may be interrogated without her Husband and that is where plead old is done and then recovery in that case judgment will go against the Feme for Damages. If to Issues Recovery then must be joined against both Husband and Wife and if the wife is taken and the Husband appears the Court will discharge =

Idem 300. Rents 87

If a Husband and wife should be sued for a Debt of the wife before Marriage and after judgment the wife dies in this case the Writ may be collected from the Husband but if the wife during the pendency of the suit it will abate because the Debtor is dead this is understood as an Exception to the rule, though it is not technically

5 Rectore

Idem 35

Lesson - one - Force

Of the Electricity in Nature for this
Lesson before and after Lightning
the Lightning exists from the Clouds
only passed to earth from the other
hand during the Lightning in the same
way as Water flows from the most
to the least and to Earth against
other has been passed to earth.
The meaning is the only other Lightning
Lightning the Electric lies before been
passed then the Lightning alone is Lightning
of the passed via before they are either
and the Lightning is not Lightning but only if
have not other meaning it has been
in an illustration and the Lightning is
not a Lightning as but in with
the passed into earth it being to but
and not the state of the earth are have
filled by the Lightning but the Lightning
the will be it the in same way. Electric
Lightning is Lightning the only earth by the
have after Lightning. Now the earth

Lightning
Lightning

Baron and Feme

[illegible] be liable alone for them? In this case, there may be cases in which they may both be liable and cases in which he alone is liable — the ground of his liability then depends on the question whether it may be enforced [illegible] or not. If the Husband is named [illegible] a tenant and [illegible] the [illegible] of the Wife's agent in this case and the husband alone is liable. [illegible] as [illegible] with the Husband [illegible] Wife — [illegible] only be made through [illegible] in which the wife is [illegible] that she is [illegible] not under the [illegible] of her Husband.

But [illegible] the [illegible] the last [illegible] of the Husband [illegible]

or

or in his employment: in such case they are both liable to the wife for their acts, and will in the death of the husband, nevertheless be liable for the death of any act done in pursuance of them.

Rule 5. Co. Litt. 270 a. 2 Roll. Rep. 270

They far has been considered the husband is only or only of the wife: there will be no remedy the liability of the husband for any offence the wife may commit against the laws. But it is to be that in the personal injuries is no thing need than a fine the husband and wife with the wife and they must be joined in the suit: but where it is an injurious or corporeal personal the wife alone is injured, for in this case she has all the remedy of mutiny or disgrace. An action for the recovery of a penalty is an action of debt & the wife is liable for a penalty the husband must be a party to the action. As a general rule, if there were

Co. Litt. 68 Bract. 3

Person and Estate

[illegible]

[illegible]

[illegible]

Baron and Femme.

[illegible] Been thought the reason of which
preserve domestic harmony &c. There is
a similar [illegible] in [illegible]
[illegible] is [illegible] [illegible] in a [illegible], 8
[illegible] the [illegible] [illegible] [illegible]
[illegible] [illegible] much [illegible]
[illegible] accord with the [illegible] which [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
considered to be correct.

A Statute of Eliz. [illegible] obliges the [illegible]
of Children to maintain their Parents.
There is no Common Law on this point
but by a Law of Nature that a Parent
is bound to maintain his Children.
There is one case in which the Husband
is bound to fulfill the Wife's Contract
made by her before Coverture after Co-
verture – but it is at an end this is an insu- 15. 9th. 14
lated case – vide marginal authority –
[illegible] will be considered in what cases the
Wife is excused when she has committed
tort in company with her Hus-
band.

Paris and Sum

and 1st Whereby an Alien Merchant prohibitum be alone in liable: It is in the Officer in against the party however attending be alone in liable. But they may not extend to enemy which would have been in a State of Nature, by Necessity, for then the alone in liable.

Hawk P.C. 1 Hale 45.47

The Wife in also liable for Necessities and there is one case in which they both are liable viz. Keeping a Brothel

A Wife can not be made an Accessory after the fact in felony.

2 Ld Ray 28.

What Contract made by the Wife and living in the Husband's not an Alien

A Wife can not act as an Executrix for Husband because of a Contract made as an Alien which entirely from the Husband he is bound by it: the principle here is that he accepts the Contract and has not power to claim quasi for

The Husband is bound if the Wife and which it is made by the Wife & and

to

for them to enforce the provisions made in Sec. 1.26
on the presumed ground that he had given
over the contract

2d The husband is bound to fulfill a contract
of the wife relative to property acquired as things
according to the custom of the country in
which they were married, if the wife gets a
share and keeps such goods as by usual
in a wife's hand, the husband is liable
to pay under the wife regard
must be taken to their standing in society
the wife of peasant should not
have the same elegant trappings from a
house. The husband could not be liable
unless he made them, when perhaps the
husband of a wealthy merchant would
be bound regard must always be paid
to the circumstances of the husband and
the wants in life. But as the wife
was to have received on the footing of
paraphernalia wife's goods on their
being The authorities say the husband
could

Civil Code 2.20
Civil Code 2.20
Stephens 345

would not be liable to such a case: but
perhaps there would be some cases in
Equity 1st The Husband is
bound by every Contract made by the
Wife to his use and benefit tho' it be
without the assent of the Husband purchase
a Horse & Feme and the Husband
should not then be sued by Feme to
pay on their behalf benefit of the pur
chase perhaps evidence that he authorized
2d The Husband is bound by Com
pact of the Wife which generally he
would not be bound by were it but among
Lovers & friends Circumstances they
be Husband goes out a Lover Sometimes
here the Wife may carry on the business &
her Contracts will be binding: Every the
are at Terms & acts of the Husband
inconsistent to bind such Contracts
or extend merely to relate the
may contract and the Husband
must fit the Contract

Vide 35th
Ch. 120.
Ch. 2d-3rd

1. The Defendant is bound by the terms of the contract for necessaries to allow her any thing. John Stiles Prime, his father, not being able to provide furnishing herself with necessaries, from he could be bound by this contract even though he publicly forbid any person to trust her and should swear to all the Commandments that he never would pay, yet if he did not actually turn her out of doors but she has good reason for departing in his own also he is liable to maintain her notwithstanding his forbidding, or even if turns her off she departs without reasonable cause he is not bound to find her necessaries: if she commits adultery he must maintain her: if she elopes with an adulterer the Husband is not bound to pay for her necessaries, nor is maintain her if she return. If the Husband jailed his wife from [illegible] a Question [illegible] but tells her he will pay

Ibid. 8.

Ibid. 8. 9.

Ibid. 8. 9.

for a Valid one. It seems he is not bound if she purchase the first one. Bibb's Reports as before said. Now applied if the husband personally. If the husband be cause his life after an elopement with an adulterer he is bound for her necessaries even during the time of her absence.

While the life-clerk with an adulterer and contracts for necessaries it said in the Books that the husband would not be liable for them even if he did not know that she had thus eloped. Now I judge these cases this decision is not grounded on principle on the better and more a Servant took out a new commission after he was Discharged from it in order that the man should be liable for necessaries. If these relations is not a material circumstance. Now it seems to have been that the case of the servant is precisely in point as the case of the wife. The life in each case.

4th Lecture

5th Oct. 1830

case would not be liable for her necessaries: If a Wife with an Husband living with her Husband he is bound by her Contracts i.e. as usual: It has been said that there is a case in Bromquett and Ellis 286. in which it is decided that the Husband is not liable in that case: But that case differs from this for there the Husband left the Wife and she continued an adulteress: Though strictly speaking even in this case he would be liable provided the person who furnished her with necessaries did not know her delinquency: that she was an adulteress and that her Husband had left her

It is a rule of Law that a wife living apart with an Adulterer is barred of her right of Dower: if however the Husband receive the wife her right of Dower revives: She is bound by her infamy by her reception of the Husband and Wife reverts by mutual agreement and the wife has

separate allowance of her education is contrary to notoriety, the Husband is not liable for her Contracts, though made for necessaries. Now this proceeds on the ground that the separate allowance is sufficient for her support for life, not merely while she lives. Suppose she never has property, is there a distinction in such a case, if the life is also to cease before sufficient for her support; the Husband is not liable, but if she is entitled to support beyond her Labour he is liable. It has been offered that a man could not tender himself liable for necessaries in certain cases: now this must be considered with some restriction for the Husband may limit some particular person who may be by accident after life should purchase necessaries, it is with the Husband and should sell a person knew the Husband is not liable: this Judge thinks may be now not recent

Wms Saund. 1 Vol. 275 n 8

L. & B. 9 Show 203.

for

for the ground of his decision relied to that they were cause to be left in order to prevent him taking: & as they being convicted at the moment of the pleas share and judge Clerk says he can not conceive how and wherein of the Wife 1 Salk. 118.
afterwards can discharge him
A wife can not bind her Husband by an Decree for her own name unless thereby a special authority given her as by a power of Attorney &c: it would not bind him if the decree was given for necessaries but the Husband would be liable in an action 6 Ph. Ev. 70.
of Assumpsit: A Contract for money loaned to be paid out for necessaries would not bind a Husband in a Court of Law: but it will bind him in a Court of Equity: the rule in Equity judge Lord thinks should be adopted in Courts of Law for tis the correct one. Sug. 185. 1 P. Wms 183 & 559
If the Wife is committed to Prison for a crime, the Husband is not bound to grant Gilb. Ev. 12 Ed. 28. Sug. 128

Husband not liable for wife's debts

or death necessarily but the husband's property is it.

Husband liable for wife's debts

If the husband dies the wife at the time of marriage under the marriage the debts are also paid or liquidated, for they are at the husband's disposal and are also in his possession. But suppose a bond or note is found after his death in favour of the wife against him. Does this persuade to the wife against the executor. This answer must be understood with some qualification because the note bond, & must be exhausted in order after his decease or they must have been given before marriage. If there is no such qualification the debts are not recoverable. We will now consider such debts as are to be paid after the husband's death.

Debts of husband & wife before marriage

Comm. L. 6.

Salk. 320.

Salk. 5.

Ld. Raym. 1.

Debts contracted into by the husband and wife before marriage, if not paid in his lifetime, after the husband's death are binding on the wife and survivor

they were liable only in Equity but it
is otherwise said. The Wife in Equity
considered such a Creditor as that she must
be paid before other Creditors of the Husband
made a fraudulent settlement upon his
son the other with an Creditor under
pretence of having a lien the Consideration
was the Marriage they infer from the
Consideration was not that she should come
into possession to the Husband but simply
that she should receive from this the income
and profits thereon concluding that she must
see to it the like a Bill in Chancery has
upon such a case

Then will be considered these Contracts
respecting Real Property made before
Marriage, or a Conveyance of Real Property
to the Husband & his intended Wife
or Conveyance of this into by the Husband
to his intended Wife, & binding on him after
the Marriage. Upon these point in the
same manner as a Jointure, personal

Pinnock v. Force

Compared

Bunn and Bunn

Co. Litt. 112 a. engaged it to be so that never have the civil rights of the Husband and Wife been considered from this maxim of Common Law that a Husband and Wife can not contract together after marriage because they are but one person in Law. Now this is true as it respects personal property but as respecting real property they certainly are two separate persons: for a Devise of land to Him does not rest on him but in Law and he can only have the use of them:

In obedience to this principle it seems to have been a rule of Common Law that a Husband and Wife could not convey real property to each other:

It is settled that a Wife can not convey real property to her Husband during Coverture. Formerly the Husband could not even sue in his wife but a plea was allowed to be made by conveying to a third person and then he conveyed to the Wife:

and

and they does allowable: they J.S. would convey land to Nokey and Nokey would convey it to Susan the wife of J.S. immediately: Consequently a husband may convey real property to his wife in the circuitous course: But now by the Statutes of Uses this conveyance can be made directly, as if John Doe conveys land to Thomas Doe for the use of his wife: now as soon as this is done the Statute vests the title in the Cestui que use who is the wife: John Doe there is no such rule in Connecticut but the old mode of conveyance to a third person is in use: & then he conveys to the wife.

Co. Litt 112 a pl. 106 2 Ch. Ca. 188 Plowd 111

The Husband can not convey personal property to the wife though he may take it. In Equity an agreement entered into between the Husband and the wife after Marriage, that the wife shall have a certain Annuity and have the benefit arising from the Sale of them is binding on

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5th N. 331

the Husband

Contract for wife by the Husband that he will at some future time allow the wife such privileges as certain articles for her own benefit can not be found in a court of Equity: Articles of agreement entered into between Husband and wife to this effect.

The English Law on this subject will be mentioned: but whether it is recognized in the United States, I cannot say he may not know. On having given notice the parties are bound by all the legal covenants entered into: The Husband may renounce his marital rights, and agree, he can renounce them he have one reason than: So if the Husband and Wife agree to live separately he can renounce all right to her person and nothing more: If he covenant to allow her a separate maintenance he is bound by it: but in this case if a dispute should come to law he is to allow it. So if husband should have

is entitled to the rents & profits. If he covenant to renounce the property coming to her he is bound by it, and of course can have none: therefore in all these agreements nothing is to be taken by implication: every thing must be expressed. She can suffer no injury which may be found to be proved after deliberation: She can not devise her person and if he attempt it by his award of the peace: Neither can he recover for any pecuniary Compensation with her after deliberation: So a lunatic cannot convey her property without joining with her Husband in a fine provided he has renounced all right and title to her person and property.

Str. 478. Stathem v. Compton 1 Atk. 348.

For the Doctrine of separate Maintenance, see 8 Mod. 24. 2 Com. 83.

2 Vern. 482. 502. 497. 2 Atk. 515. 4 Ves. 3. Br. — Cap. Ch. 644 There is a case of this kind in the 2 Ch. Cas. 283. It was an Agreement to provide for the

without

2 Hall 217.
2 Ves. 675

ployment of the wife, provided it should afterwards be necessary for them to separate: and this agreement was held binding. Where in all the cases of separate maintenance, the wife is considered as a feme sole, except as to marrying again. It has been said that after separation the husband has the power to alter these articles: but, nothing except a postnuptial agreement to

2 Ves. 386.
Br. Chy 497.
1 Sup. 498
2 Ch. Ca. 511.
2 Br. Ch. Ca. 90.
3 Atk. 547.
2 Br. Ch. 90
3 Br. Ch. 614

again will be a discharge of the articles:

The wife is inferior to creditors in point of obtaining her separate maintenance

Contracts by which a wife may bind herself during coverture

It is a general rule that the wife cannot contract so as to bind herself, but at the time and after in which she may. If therefore we can discover the true grounds which make this contract void it will follow that whenever the grounds do not exist the original contract under

her Husband will be gone & the power which seems her inseparable & natural long as she is the Husband's right to the person of his Wife and Dr. Prentiss considering the Wife to be in the power of her Husband therefore whenever we can discover that no Marital right of his is effected and also whenever we can presume her part to be under any over ruling influence of the Husband she is a competent and her Contract will bind her. Thus will be avoided many cases in point of law which may have never been determined to be Rebutted law.

Ex. Where a man was banished the Realm hence the Wife is permitted to sue and be sued as she is not under the control of her Husband neither are the Marital rights affected by her Contract. It is said in this case that the banished man is Civiliter mortuus and this is not so for the Wife can not prove so long as the Husband lives

Ex. 305.

Dr. and Jones 66 Mass 85 Pick. 11. 35 Mass.

139.

Baron and Feme

2d. When a person abjures the realm

1 Salk. 116.
Comb. 410
2 Ld. Raym. 147
2 Salk. 116

which is a kind of [illegible] banishment, for he never can return again. Now in this case the wife of such a person may contract, and her contracts will bind her in the same manner as the former case. So too it is said the wife of an alien enemy may contract on the same ground.

[illegible]

Again the wife of a man transported if it be for seven years only may bind her self by her contracts, and is bound by them in the same way.

Question

Now will be mentioned the only [illegible] which it is said determines the great question viz. That a wife can not bind herself living on a separate maintenance. First will be noticed the leading case on this subject which [illegible] [illegible] [illegible] though on a different ground from that [illegible] [illegible] in all cases of this kind [illegible] the wife contracts [illegible] debts

and during his time of adverse possession
husband & wife gave a bond and afterwards
remained with the husband, & death
his time was afterwards put in suit against
her and her husband and the
court decided that they were liable to pay
the bond. But to prevent this case has arisen
from ignorance by a society of conveyancers
Now Judge Bleem says he agrees that it is
contrary to the last decision on the subject
provided the court in his opinion
were correct then decision on the ground
of coverture maintained and it seems
to be so. But the Judge contends that
the decision was founded on the court
and to give effectually which is the
sole ground the decision has not been
overruled. The contract to his obligation
is the proper ground of the decision for
it follows in such a case that the husband
has remained all right to her separate
property the wife and consent of the
husband.

Contract
Bond

Devon and Dorset

Now will be considered the case which it is contended overthrows this in England. The first case is in 2 Chitty's Reports 1379 = the wife in this case was sued and the plaea Coverture: the Plaintiff admitted it but replied that she had a Child: to this the Defendant & the Court said the replication was insufficient. Now in this case the Husband had never abandoned his right to the person & life of the wife on the contrary he had a right to reclaim her at any time, consequently this case does not shew the contrary where there was no Covenant to live separately. The next case is in 2 Salk Rep. 1995 In this case there was voluntary alienation and a deserted maintenance. But there was no Covenant which could prevent him from reclaiming his wife. He could put in plea this separation deliberate at any time consequently they are not like the case of Dorset

Dalton v. Dalton

Ex Parte

The next case is in 5 Brown Ch. Rep. 106.
In this case an action of ejectment was brought against the Wife for money paid to her. The plaintiff in error and the plaintiff rebutted that she was an adulteress and that her husband had left her. The Court said the rebutting evidence was ill. Now there was no covenant in this case consequently it is not applicable to the Desnoyers case.
The next case is in 5 Term Rep. 96.
This case is similar to the last in one respect. Viz. there were no terms of separation. There was a suit pending for a divorce before the Ecclesiastical Court and the Wife had a temporary alimony allowed her during this suit. She was poor and followed Bartlemen and the other was given in a preference by way of restitution and the Court said these facts were not sufficient to make her such.

the next case, in Brown & Chapman 604: It was a case where the Wife deserted her Husband and carried on a trade. The trade, stock and debts, a suit was commenced against her debts but the court held the plaintiffs not power. Since a Wife may not be bound in this case.

The last case is Ex. Rehay 594 and in this case, Lord Clare admits from the reasoning of the Court that they intended to overturn the case in Burnford. Yet he contends that they distinguished and of opinion is not opposed to the Barry case in Burnford.

If this position is founded on the ground of separate maintenance the Barry case is overthrown: But if it is on the ground of a Husband to live separately then the Barry case is not overthrown. Now they when considering separate maintenance has nothing to do with

the

The question comes on the first if it is to see the husband's liability on his contract = the thing last came in the 8 Term Reports page 57 where conceiving that the husband had a right to reclaim his wife at any time for it was like a lease at will both parties may put an end to it at any time. The Court however in this case reviewed on the ground of a separate maintenance and contended that the strong case was overthrown = But Judge Dixon conceives we are at liberty to set the thing question in this country as our sole = There is one exception to the rule that the wife can make no contract during coverture viz. by joining in a fine or common recovery with her husband to convey her own lands: this she can do and the contract will be binding: and this is the only mode by which she can convey her lands

Power over Power

11 Coke 45.
1 Rol. Abr. 346
1 Ven. 229.
Co. Lit. 55

There is known a Custom of Henry 8.
which provides which certain Lands made
to her and her Husband for their lives
tenants one year had not been.
There is no such one in Connecticut
in the United States there is no such
power of conveying land as the feme and
Common Law: but here the Woman
may convey her land by joining with her
Husband in the common Law of conveyance. If the Wife suffer a fine in
his own proper Moiety and the Husband
be an Disagree or Dissent to it and die it
will bind the Wife: and if she die, he
may avoid it and for the benefit of
claiming his Courtesy. Here it may be
asked, if a Wife can not make a Conveyance of her land to commence after
her Husband's interest in them has ceased.
It is answered the contrary, and it not
for the mapping of Conveyance and
the Freehold Estate can not come

in future but must commence in Praesenti. 2. Every remainder must be created at the same time the particular estate is when which it is limited: but here the particular estate was created at the time of marriage. Though from Precedents it appeared that such a Conveyance might be made in Conveyancing for these Reasons and some many by Statute - Suppose the Wife should have land come to her by Descent, Devise or Deed: how can the Husband dispose of it, see Prevent the Wife from taking it? It is settled that he can when given to her by Deed but there is no Decision upon the Point when given to her by Devise or Descent. The same reasons exist in these cases that do in the case of Deed which is that it may affect the right for he may be obliged to pay taxes which he may think ought the value of the land=

Distinct

A Wife can execute a power without her husband: the power may either be a naked one or one coupled with an interest. 1st Concerning naked powers: This is any power or authority given to her to dispose of lands or personal property. She can send away such land in her own name without her husband: and if it is an authority to dispose of them to whom she pleases she may appoint them to her husband. So where lands are devised to sell this is a mere naked authority for she has no interest in them. It makes no difference whether this power was given to her before or after marriage.

Contrary upon Trust

2 Suppose she has not a naked power but a legal title or interest. As where A makes a will and gives his lands to B to sell. This being coupled with an interest and to a good consideration the wife without her husband joining, if they have been married, to determine it, let

we see why the Husband is an joined. He is because he disposes of the Usufruct. In this case has the Husband any interest in the Land? Has he the Usufruct? Certainly not. Some Elementary Writers say he ought to join: others that he ought not and Sir William Jones is quoted by both. The truth is in the case he would decide that the Husband ought to join. but the three other Judges were of opinion to him. Hargrave says this is a disputed point but he lays it down that the Husband has no interest in joining, but it may be disadvantageous to him and consequently concludes that it is not necessary to join.

Sir Wm Jones, Rc. 137. 157.

Note

Of the Power which the Husband has to convey away the Real Property of the Wife.

Now all the Husband can convey away by Deed Real Property alone is the interest which he has in it and nothing more. Litt.

Litt.

passes not even if the form of a Conveyance is a fee Simple. So that on his death the wife may enter on the land for a life Estate as all the Husband had in it was in her Real Property. But if she joins in the Conveyance it will bind her. If an Estate is conveyed to the Husband and the wife during Coverture and he accepts it this does not bind the wife at all and she may agree or disagree to it as she pleases after his death.

So if a Husband and wife join in a Conveyance that she is not allowed to make, & he dies it will return to her. This is not known void; tis only voidable as she may render it valid by an agreement or by her assent. A mere parol agreement will be evidence to make it valid.

In this case the deed is not void and the parol agreement does not make a new one. If the wife accepts the offering the Deed

A Feme covert dum sola & sans Baron fait un
lease pour vie et convient de ceux que la vie
est subsistant à la discretion d'un incertain
occupant la vie durant le Husband d'le
husband est alive et retourne home mais
après son retour il perd la vie. Le
Feme lessee en le possession de la par
Occupant et lease est devant le
Husband mais vie pendant Quest. Mais
si elle agree à le lease après son Hus-
bands death elle must pay the Rent
de son inheritance et Rent implies an
Agreement. Suppose a Woman was
ten years and fifteen and at the time
of Marriage she was poor, then they
marry her Debts and she must be found
with her Husband. What ought be land
received during the Coverture and some
of them remains due at the Husbands
death in this case the Husband receives
rent for them. The Husband can
not release a Bond made by the lessee

and

Roll. 349
Co. Litt. 26.

Roll. 351
Litt. 3 b
Co. 25

Moore 529. and a third person before marriage to take effect after his death. Now if he should contract with B. that if he will marry C. and should outlive him, he will give 100£. to C. C. cannot release B. from this contract because he has no interest in it. A wife may suffer an life the Estate tail in reversion of her Husband. A life or Estate in fee and he remainder by previous outlive Bro. Litt. are postponed. Now if the Husband

Co. Litt. 266 fails to perform the condition the Estate is left to the Wife. But where the Condition is annexed by law and not by the parties the Wife or the heir shall enjoy the

Co. Litt. 55 the Husband neglects: the neglecting to take the Oath of Fealty

Or what safe the Husband and feme may in his Wife is a Suit

In all the cases in which the corporal tenant ceases it to the Wife the Husband may in her in the Wife

For all her wife's goods before Coverture and for her labor, earned on Sundays before Coverture she must be joined with her Husband in a suit: and the issue, might be said resolving an injury done to her freehold, her person or her reputation whether the injury was done before or after Coverture —

1 Bulst 21
1 Roll Ab 347
Cro Eliz 337
Cro Ch 117
1 Brownlow 205
Yelv 89

For injuries done to her person or reputation we have already considered the action her husband ought to sue which the husband may join alone: The reason for joining the wife in this case is this, that whatever the husband recovers in these cases is personal Estate and if he obtains it, it belongs absolutely to him: But as they are also joint in action if he dies without reduce them to possession during his life, they survive to the wife — Now if he should die and have a judgment in his favor, and then die, it would survive to his Executor whereas it ought to go to his wife and

1 Sid 205
1 Mod Ca 205
Cro Jac 304
" 588
Cro Ch 70

they

[illegible] and obtaining a joint
[illegible] it will be found it was
time spent in litigation. Writers
that if a bond be given with a wife before
marriage the husband may sue alone for
it — first the petition is advised — which
is objected to as contrary to law. There
may be demurrer — There is a case
in 3 Salk 124. and Bacon 50. which is
a case to support the petition but in
these cases we find that the bond was ac-
tually given during coverture. There
are also two cases which are cited to
contradict Fraterne neither of which
[illegible] decision has any bearing
on this point. Another case to show
the [illegible] being is also noted: all that
the case proves is that when the property
of the wife was actually vested before
coverture and converted during coverture
the husband may maintain an action
on the contract and this is undoubtedly
correct.

Bacon 50
3 Salk 124

Ibid. 124

correct: for as there had been no conveyance of the property at the time of the marriage, it vested in the husband: but it is there said that the husband might join the wife if he chose. 3 T Rep 528

Berry b. 6 is also cited. This shows that gift made to the wife before marriage the wife might be joined with the husband and that for Debts which fell due to the wife after her husband's death she either may or may not be joined, but in the last case the Chancellor lays down a position on which Judge Reed has already expressed his opinion and which he understands not to be law viz. that if a Legacy is given to the wife before or after Coverture, it will survive to the wife after the death of the husband Bl. Com. 2 v.

It is said that the reason why a wife can not sue alone, is that Coverture is a disqualification: But it seems that this is not a Disqualification as 3 Rep. 67

if she were not in [redacted] coverture.
For her Counsel where she does allege in
treaties, for an injury done to her personal
property before coverture can only be pleaded
in abatement = But where she is attainted
personally so that she has no right which
remains in any respect wherein, Bar-
Ex. Hayes. ratione coverture might be pleaded in bar as well
as abatement = Bloodtying in a Strange
case for as it respected the personal pro-
perty which by the marriage vested in
the Husband the crime of treason could not
subject to the Life. It may [illegible]
say case that should the Defendant die
before the Husband might join with her
Wife and bring a Writ of Error and re-
verse the Judgment, so as to avoid the
Judgment as to Costs. = It seems to avoid
that the Life can not sue alone for a
wrong done her Husband unless but
can perform in Error. Here the Interfere
and Impunge Error, and the Husband
could

could not bring an action in a Court of Law for forcing his Wife to receive one Penny. Judge Kent takes the substantial reason why a Feme Covert can not sue alone is, that the Defendant shall not be vexed by a Suit by a person who, should the Defendant prevail, would not be liable to pay costs, and a Feme Covert would not for the Law so intends properly.

Incr. Debts accruing to the Wife Dum Sola Continuant, or of a Note or Bond given to her During Coverture the Husband may bring an Action alone on it, or may it be joined with the Wife, and an action brought upon a Note to the Order of a Husband & Wife jointly was brought by the Husband and Wife for Work done by the Wife and the Court said it would not lie for the Husband should have the Action alone. Judge Kent says it does not see why it would not lie as well as

Of Feme Covert

Cowd. 156
3 Salk. 403
Cro. Eliz. 318
307
Salk. 84
Salk. 114
Ld. Raym. 77

in

in case of an express promise made to the wife. But the Court in that case distinguished it from the case of an express promise admitting that in the latter case the wife may sue with the husband: but they say that the liability of the husband will not amount to the same.

The same might have been said, and an action should have been made to pay the same, but this reason would be an equal objection in all such cases where the cause of action does not amount to the same difficult to perceive any reason for, except barely why the husband should not be liable.

In what case the husband may be sued either to bring an action in his own name or to join his wife.

If husband and wife sue for his wife, unless she has in some way been concerned it is in the same A.t. of course arises from the principle that in the

cases in which the wife should be joined by the husband might perhaps be decided by an inflexible rule that a distinction must be found: but it is not so. It may be said now as a general rule that in all cases where the wife or her property has been the immediate cause of action and the husband has suffered no special damage from such cause the wife may be joined with the husband in an action for that cause. It is evident that this rule comprehends the cases in which the wife may or may not be joined as well as those in which they must be joined. (But when the person or property of the wife was the immediate cause of the action and that cause has occasioned no special damage to the husband then the husband may at his election either join or not provided the cause would survive to the wife after his death.

Orme 103
Br. fac 235, 398, 438, 442

He has already been offered what the Law and as it comprehends all profits accruing to the life during the Existence: & for rent accrued on the land and for trespass on the land injurious to the property only: if the property is sold before Sovereign and possession afterwards the Purchaser may join the life in an action for it. The reason given for this is that by bringing an Action against the Plaintiff affirmed that the property is in himself. And here in Pothier and Dalmas for the property of the life tenant being Constituted it is said that the life can not join with the Reversioner for the bringing the latter action since it is evidence that the property is in the Plaintiff and if it is in the Plaintiff no part of it can be in the life for it has all ceased in the Plaintiff.

Hence 83 Fidelity.

Dyer 35 Cutler 102

Dyer 35

Suppose in this case where the Plaintiff has his election to join or not the life in

they actually join her in making payment and then die in England it would revert to the wife on the principle of the Accession, but where the principle does not exist as in Connecticut it may be doubted. At Scotland it would be collected in the name of the wife but the question is whether she will not hold it in trust for the representatives of the husband. I cannot think so for he is of opinion that it must be considered as a voluntary grant from the husband to the wife: the days in ages in reason why the husband should join the indian unless it was to make a gift of the payment to the wife at his death after receipt as well have done alone:

On laying down the general rules respecting the cases in which the husband being at his election join the wife there was an exception as to that case in which time is from the nature of the action a bar

Ser. 369

Co. Lit. 351
1 Bro. C. 340
1 Ves. 46
1 Ch. 126

as

Damage to the Husband. These cases of civil Damage are for such Consortium amisit &c. In that Case the Husband and Wife must be joined as Plaintiffs

Stile 6 Co. 25. Hobbs Sub. Lect. 312

jointly. The rule is that if the Action would lie against the Wife they must be joined. If a Husband and Wife have both been beaten and stone person they can not join and bring an Action for it. The reason is that the having the Husband is no Damage to the Wife but if certain Damages are recovered for the Wife and certain for beating the Husband he may release the part of himself and take Judgment on the part of the Wife. If the Husband & Wife join in committing a battery under Seven years of age they can not be joined in a Suit brought against them for it for it has already been observed that for injuries done by the Wife in the Husband's presence he alone is liable

Stat. 1 Ed. 2 c. 2 & 3 Ed. 6 c. 7 sec. 10

But perhaps a gaoler would not even
obtain the declaration: the life of the
husband and life are sworn for ~~[illegible]~~
nothing, and on trial it should appear
that the Prisoner is not guilty and that the
life of = judgment could not be rendered
against her in such a case.

Cont. 2d. case under the little jointure. 1 Ful. 328.

Power of the Wife to devise.

A married woman may make away
her own property at Common Law. Her
honour must not be made up to injure
the Husband marital right. But
in this case consider this subject under
Serjeant of Authority = There is nothing
in Marriage which incapacitates the
wife for she may make a will and an
hypothecation: and accordingly not
withstanding the maxim, she is pun-
ishable for Crime: Again by a cer-
tain Conveyance she may give away
her Real Property of course she may
devise. But by said the impolitic to al-
low the wife to devise away her property

for she may be under coercion: but the same objection may be made to other engagements of the husband, & the husband engagements which are allowed. It is also said that a Feme is often in a situation, & distressed when the Wife is provoke to commit: it is the husband's duty to prevent such a scene. It is paid in other engagements the Wife is examined with the not husband: but here what she says into Court she will go with an intention to ruin him and he will invariably answer in the affirmative = But further why should the Husband only be accountable in so light & lax a manner to pay? it is known to the Wife that they husband will be fined by the Court and which is entirely against law: But it has been proved that the reason of the Wife being interrogated is from the ear in the ground law which is not in use in Scotland. Should she refuse the

also to reward those who have done everything to promote her happiness and in fact make her prosperity.

Secondly we will consider the subject on legal grounds.

The Constitution says the wife and with her husband, consent convey his personal property. This inserted seems to imply that without his consent she cannot sign her personal property with it is true, but it must be remembered they concerning his personal property not her: it is said her marital rights are affected or in jeopardy by the contract: this is an objection for the Equity takes it with this incumbrance. As the husband devises his real Estate it does not bar his wife's right to Dower the Equity takes it with this incumbrance. The cases furnish clear concurrence and analogy.

It ought to be remembered that anciently it was rare for the Courts to compel a sale

Abb. 6 St. 39 Year Books 5 Pages 3 Bright 3 & 5 Ofch 9 & 3 & 6

3 Co. 23 b. Cook's case

reporter: a second right it is said by Altham and other Authorities generally that a lease shall not go by law for that cause to devest the right out of the Lessee. But the same Authorities say that if the Lessee Covenant after the Lease made for the same not to alienate the land Probably it shall be a forfeiture of the right of it. Tittle the Husband for being ordered the wife the Estate Devised to him probably the right of it. Cooper's case 5 Co. 24 b. Cro. Eliz. 531. 48

Cro. Eliz. 531. 48

Lyndewode has said Decree the Doctrine following that when the Lessee for life the right of it.

It is said Doctrine through that a lease can not be for Husband Cleaveland

1 Co. 3 b. Sutton's case 303. 305

or may Devise to the use of Wife but for life is given to a Wife for life and Devise the Lease may Devise it.

It is said a man may not Devise to the use of his Wife but Plowden says that he may a day after the Husband

Devises

however is confined to certain things.
Actually a lifetime and no real property
but like the usage of Lowell, no general
words or phrases in said Devise can that
is that the clear that otherwise married
women have property they need devise to
independent of the Statute. But it is said
County of Chancery only have given effect to
the Devise of the Wife. The County cases
go in opposition to the Law for the reason
that the Statute has given it they
ought to consider it. Will is valid and
Surely Common Law is as binding as Sta-
tute. to pursue the
wife's point of view. The Wife's
rights if not reduced to the Devise
and return to that accordingly
we find the many Devise being in related
to it is clear that Coverture is not con-
sidered as creating a disability to devise.
If these principles are correct we think
and as Wife as. We think many Devises for
the

1 Pr. Wms. 196.
2 Pr. Wms. 616
9 Ves. 244
2 Ves. 255
2 Atk. 57
2 Atk. 205
1 Br. Ch. 10

1 Mod. 31.
3 Ch.

Moore 48
1 Salund. 608
Cro. Eliz. 912

Power over Land

the Husband can not bind to the Husband
and they can examination recognizing the Law
But by adhering to what we find in
some part of the Law that a Woman may
devise real property Judge Reeve con-
ceives that from the feudal tenure to Henry
8. no person could devise real Property.
The truth is previous to the feudal times
a Wife might devise real property away
the Survey for they had repealed the Law of
the Roman and this conformed a
way thru When William the Con-
queror left to some particular District,
their Custom was used it is the circumstance
some place for Women to Devise which
shew that they may Law Place throughout
the Country - In Connecticut there
is Statute enabling married women to
devise their own property

Cases cited in Zoll 4

Cases cited in Zoll 4

This will be considered how far
Marriage is a revocation of a Will
made before the Lys before marriage

10 Statutes

It is said in the Books that a Marriage is a revocation of any Will which the Wife might have made before marriage. In many cases it actually is, or rather it prevents the Will from having the intended operation: So if a Woman should Will away her personal property in Expectation & then marry, they would revoke the Will: because there is no property for it to operate upon; for by the Marriage it becomes absolutely the Husband's. Judge Kent conceives that it will revoke the Will, when by operation of Law the property would have gone to another. They would have gone to the Husband: So that if the Wife had devised away her real property, the Will would be revoked by the Marriage. But if she should make away her Chose in Action, then marry and die before they were collected by the Husband, Judge Kent con-

ceives

the bill would be good for the Law did not vest them in the Husband till they were collected.

Of the Wifes separate property

Property may be given to the Wife with real and personal to her sole & separate use: and in this the Husband has no interest. This property may be given to her either by Devise or Deed and also either before or after Marriage: It may be given to trustees for the sole use of the Wife and the trustees have no interest in it or control over it: for she may dispose of it, as she pleases. Formerly it was the custom to give this property to trustees but of late it is given directly to the Wife. It has been matter a question whether trustees were not necessary to prevent the Husband from taking it by mere delivery but it is now settled that they are not necessary for the Law is now so well understood, for this purpose.

Ver. 548 & Atk. 195. Brandon 787.

1 P. Wms 97. 1 Ves. 316. Mr. Ch. Barn 382.

1 P. Wms 82. Hunter 1 Ves. 83. 1 Ves. 83.

There are no such words, necessary to create this separate property for the Wife. Such words which evince the parties meaning and intent. As this separate property of the Wife is liable for her Contracts made during Coverture. & is in Equity thereto, not in Law. But if the Wife advances her own separate property to redeem her Husbands incumbrances. Now if she take a receipt for the property she will be considered as the incumbrancer in Equity on the Husbands Death, and the Heirs will be obliged to pay her the money before they can get the land. & if she lend her Husband her own property for any year & taken a note, bond or receipt for it she will be considered as a Creditor of the Husband and can collect them after his Death. Seem if she take no bond on the land for in that case she is supposed to advance this money for family purposes. An Agreement entered into between the Husband

3 P.C.R. 24
3 P.W. 38
1 Ch. Ca. 10

1 Atk. 235
2 Ch. P. 82.

2 Ch. R. 341

[illegible] concerning her private property that it shall be paid over to her husband and be enforced in a court of Chancery. There was a bill which came not to be considered or determined by a Lord Keeper in an separate property and placed it out at interest in the name of her husband and the husband dying has been considered as a present to the husband and consequently his name be kept in. If just it stood whether a feme covert may have separate trust property without joining with her trustee in the property in the trustee's hands. Decreed she may compel her trustee to join. The money belonging to her separate

3 Ch. R. 42 personal property without joining with her trustee. If she contract debts for her separate estate, shall be liable for them. The money in question was by her for other uses. A feme covert separate maintenance and the husband respect

to

neglects to pay her, may sue him in Equity in her own name.

Of Settlements made by Persons on their Wives before Marriage

It is a general rule that Minors may avoid their Contracts: this case of Settlement however is binding in Chancery. And this Settlement may be confirm'd as incident to the Marriage Contract which the Minor is capable of making. It is to be remarked that they are not of course binding for a Court of Chancery will enquire into it, and if the Minor has made an improvident settlement they will not bind him. As to a Jointure made by a Minor this is also good unless it evidently appears he has made an improvident one.

Of Marriage Settlements made when they at the time of Marriage are settled. Tate no man can make a Voluntary Settlement to another man

Bates 184

man which will be good against the party: but void as against third and it is inquired whether they are prior or subsequent only: The rule enquiring is whether the Grantor was indebted at the time of making the settlement: Mortmain for whether is any fraud or not in the conveyance. But then Marriage Settlements go on very different grounds: for there is a valuable consideration here and it will be good against creditors.

However the Settlements must not be extravagant or unreasonable: tho' also limited in its elevation for the husband can settle it only on his wife and her issue: he can not limit it to his wife and then to his collateral relations for after the widow and the heirs may take it.

Cowp. 372 Goodtitle v. Tenant 3 Burr. 1610 3 Atkins 1 Vern. 95.

Of Marriage Settlements made — " after Marriage —.

Ant. 81. 2 Ves. 8.

It is a general rule that a Settlement made after Marriage is not good against Creditors:

[illegible]

[illegible] Husband and the [illegible] [illegible] [illegible]

Baron and Feme

Quere is it lawful to maintain law — the husband may a Mortgage to himself and his Wife: Mens what becomes of the interest where the Husband is dead? Is the possibility of the Recoverer it survives to the Wife: 2 Ver. 185 Her right however must yield to Creditors: would it survive to the Wife when third in, as the Recoverer? Judge Hearn thinks it would for it is a voluntary grant to the Wife. If a married woman join with her Husband in Mortgaging her own Estate this a valid Mortgage and shall a Creditor of the Husband. Suppose the Husband and Wife should covenant to convey her land: would the Wife be bound by the covenant? it occurs she would not go to thing short of a Conveyance will bind her: There are however different opinions on this subject. The Covenant it has been decided that such a Covenant is binding on the Wife. 1 P. Wm. 30. 2 Vern. 8.

If a Wife [illegible] her own Land to

recommendate her Husband on his death
she shall have recourse to his personal
Estate for the purpose of recovering and
her claim will be preferred to the claim
Demand of his Creditors.

Lecture

Plow 4
4 37
1 Ch. R. 347

If it can be proved by parol testimony
that the Wife never intended any
gift to her appointing her Husband
this will prevent her from taking his
personal property & recovering
would be the same if she should mort
gage her own land to recover her debt
Lord.

Pub. 150
1 Ch. R. 264
3 Br. C. 201

Pa. Ch. R. 384
2 Vern. 689
2 Ch. 97
1 Ch. 412

Of the Settlement of the Wife
The Wife by the Marriage gains the
Husbands place of Settlement If the
Husband has no place of Settlement the
Wife gains none by Marriage and if she
recover an Debt she must be main
tained at the place of her Maiden set
tlement If the absence of the Husband
should the Wife become chargeable the

Burn for
324 S.

1 Ch. R. 24
1 Ch. R. 383
Burn S. 370
& 3

Parson and Fowler

Feby 2 00 must be remanded to the place of her maiden settlement: In this removal it is sufficient to prove her maiden settlement. It has been a disputed question whether if the Husband has no settlement and should run away from his wife she could be sent to her Maiden Settlement. Judge Reeve concurs pro nunc:

A Marriage before the Statute 26. George II, celebrated by a person, not qualified to marry, was a sufficient one to gain a settlement. Judge Reeve thinks the Law as it stood before that Statute by the Law in Connecticut: and a long cohabitation together as man and wife is proof that they were married. In Connecticut under Revs. Laws, a Wife can gain a settlement by

Feb. 30 [illegible] in a place she may with her Husband

The Intercourse of Husband & Wife is a general rule that the Husband & wife

Wife can not be witness either for or against each other. This rule has also been known extend to no other relations. The influence which near relations must be supposed to have on their minds may affect their credit but can not render them incompetent to testify. The reason why Husband and Wife are not permitted to testify for and against each other is not on account of their consciences or their interests but to avoid the disagreeable consequences which might result from it in the interruption of domestic harmony. Never if the parties agree to admit it the Court will hear it. The confession of a party himself is more convincing than other testimony and there is no objection to the admission of it. There are some exceptions to this rule. In England a Husband or Wife is allowed to testify against the other party in the cases of treason. This case is so important that

1 Phil. 67.
2 Starkie 561

Binder v. Binder 2 Ser.

then

they say private power given and to public good. The said Lord Ellenborough (Lord Chancellor) commonly that when the Husband is prosecuted for a battery or other injury done to the Wife, he cannot be a Witness: while at the same time Judge Lee says all the Authorities he has examined go through in the famous case of Lord Audley the Wife was permitted to testify and the Judge says has been no case contrary to this decision

Hull v. Pitz. Peake 63 Stat. Eq. Ev. 86. State v. Johnson 2 Ary. Rep. 351

Of the rights of Defence between the Husband and Wife —

The Husband may justify a battery or wounding (felony) committed in Defence of his Wife and the privileges of the Wife are those of the Husband and the same

The Husband has a right to do the same in defence of his Wife that she might herself do and vice versa. Thus where a man found a ruffian attempting to commit a rape on his Wife and in

Standing

killed him he was excused: the Wife might have done it herself had she have possessed the power. Where a man found another in the act of adultery with his Wife and instantly killed him they was Manslaughter notwithstanding the provocation for the Wife could not have killed him in the Adultery. These cases sufficiently explain the principle upon which all similar cases are found. The Wife must enter the Husband to find sureties for his good behaviour and so vice versa. In this case the Wife is a Witness to swear that she is afraid of her life, or some great bodily harm and the Husband is admitted to swear the same. It seems from the principle already laid down that a Husband may make a good devise to his Wife: But it was a long time made a question whether a Husband may make a good donatio causa mortis to her: his own

Rex v. Pitts Barron & Femme

3 Ed. 1. 30

ordered

Person and Force

as that that he may

Of the Celebration of Marriage

All well regulated Governments require that the Contract between the Sexes should be ordained and regularly celebrated. Until there has been a celebration there is no Wedlock in point of law, possessed of any Marital rights, nor is the Female entitled to any privilege of a Wife. It gives no right to the person or property of the mother, nor does it on the death of the father be entitled to Dower or any other advantage in a's Estate.

Reverting to the reformation the business of celebrating Marriages had fallen into the Hands of the Clergy under the idea that Marriage was a Sacrament the management of which exclusively belonged to the Ecclesiastics: at the Reformation the Doctrine that Marriage was a Sacrament was considered as not well founded. Throughout the Clergy

continued in offices of trust in the celebration of marriages. This plain they could not do it by virtue of the Roman character as they procured the Sacrament. But being continued in their practice and sanctioned by Common usage it was considered by the Common Law of the Land that a marriage could be rightly celebrated only by those who were infra sacros ordines. Thus it continued until the establishment of the Commonwealth in England, when an act of Parliament declared that Marriages should be by a Justice of the Peace. At the restoration of Royal Government and the Reign of Charles 2. the Clergy were restored to their office of celebrating Marriages; and by the Statute 29. Car. 2. it was enacted that all persons whose marriages were contrary to Church requisitions are void to all intents and purposes, &c.

Conn. Stat. Cont.

By the Statute regulating marriages in Connecticut no persons can be joined in marriage unless their intention of so doing shall have been published in some meeting House on the Sabbath &c.

Members of Council

Settlers Ministers and Justices can marry: the governor in his Parish or County and so do the Lieut. and Council and Judges of the Supreme Court everywhere in the State: if the parties are minors, the consent of the Parents or Guardians is necessary. If any one should marry contrary to the directions laid down in the Statute, he forfeits 75$: one half to the State and the other to the person prosecuting.

The Statute expressly prohibits all other persons from celebrating marriages.

A question has arisen, if a marriage is celebrated by a person not qualified according to the Statute, is it

void, and are the issue bastards, & the person so celebrating is punishable. A Minister has no more right to celebrate out of his own County, than a

All marriages in England are void when not celebrated according to the Statute 26 Geo. 2 providing of the Common Law Marriages celebrated by persons not qualified are void. Stated the Civil law during the reign of Charles 2 nothing can be found on the Subject for previous to that time no person could marry unless wed in church. After this period & before the Statute 26 George 2d several cases may be found which will give light on this point

Div. 64

After the restoration the power of celebrating Marriages was committed exclusively to the Church of England and yet we find the Court of Kings Bench showing a prohibition to the Spiritual Court because the validity of a Marriage

had

3 Lev. 375. had in the face of a separate Congregation was questioned in said Court & it was held that a Marriage by a preacher in a separate Congregation was not a p- [illegible] nor required as valid: for in the death of the Husband the Wife and Children were entitled to their distributive share of his property which they could not have had provided this Marriage had been a mere nullity = the Children would have been bastards = Such a Husband and Wife may sue for a Debt due to her before Marriage: but had this been a mere nullity the Law would not have allowed that the pretended Husband should join in an action with the pretended Wife = a Marriage by a Popish Priest was held valid = the reason was this = a man had been married by a popish priest who by Law has no power to marry and the person so married

1 Salk. 119. Salk. 119.

2 Salk. 437. Comb. 493.

was

during the life of her husband married again
the matter was brought before the Ecclesiastical Court and the second marriage was annulled upon the principle that the first was valid - After the marriage was annulled the man was prosecuted in the Common Law Court of Criminal jurisdiction, and convicted of bigamy - this seems to judge Cowen irrefragable proof that the Common Law does not consider an irregular Marriage void - Judge Cowen says he observes nothing in the Statute in Connecticut similar to the declaration in that of 26 Geo 2d that a marriage irregularly celebrated shall be void to all intents and purposes: and although it is strenuously urged by counsel that if a marriage is had in any other way than that prescribed by the Statute it is void yet the judge says he never heard it urged that if a marriage took place in any other way

Cowen's Dig. 24 S. 2 Salk. 437

ces without publishment or consent of parents such marriage would be void. The statute expressly forbids a Clergyman or Magistrate to celebrate a marriage unless these requisites are complied with. If the prohibition in the case renders the Marriage void why not in the other? The Clergyman or Magistrate is forbidden to marry when there is no publishment or consent of parents or Guardians

Lord Mansfield acknowledges it has been said that in one case there is a penalty affixed and in the other there is none: but in days he does not perceive the force of the reasoning. Surely punishment cannot define the offence committed unless he supposes that the object of the statute was to give the Clergyman the alternative either to marry with publish

ment

or to pay the penalty: But they say not the design of the Statute = The manifest scope of the Statute was to prevent the offence and in case it was committed to punish it = But on this the punishment of the offence would legalize the marriage celebrated without publishment or consent: the inference judge Bacon apprehends would be that a marriage celebrated by a person not qualified would be valid: for though there is no penalty affixed by the Statute to the offence of celebrating Marriages by persons not qualified yet disobedience of a Statute is a misdemeanor at Common Law and punishable as such.

Of the Age at which Marriages may be Celebrated =

The age when persons are able to contract in Marriage is in Males fourteen in females twelve years: Children may be married at any age but the validity

of the Marriage depends on the agreement or disagreement of the parties when they arrive at the age which qualifies them to marry. If the Male is sixteen years of age and the female eleven years the Male may wed as the female has the power to disagree to the Marriage until the female shall have passed the age of twelve years, and so è converso.

A Wife can not be married till she is nine years old and the proof is now pretty viscous outlined before that time. If a Wife whose Husband is under fourteen years of age has a child it is a bastard. Judge Tracy says he has never heard of any such premature Marriages in the State of Connecticut. He says he has known some where the parties had not arrived at the years of Discretion and he thinks it very probable that such Marriages would never receive the Sanction of our Courts. He thinks it would be void as against

Chap. 24 Statutes 340 Part 1. 32 years old

Part 32

nature

same-policy and Contra bonos mores
Concerning unlawful marriages
Divorce and alimony =
From the Statute 32 Henry 8 we are to learn who may intermarry = That statute declares that no prohibited degree of kindred shall unbreach any marriage - This amounts to a declaration that a Marriage between parties of nearly related as to be within the degree of kindred prohibited by the Levitical Law is void = All Marriages forbidden by the Law of God are void, but the Statute does not mention what marriages are by that Law prohibited so that we must resort to the adjudicating of Courts to know what the Construction of the Statute respecting Marriages forbidden by the Law of God have been -

14th Lecture

1st When there has been a Parol Contract to marry and one of the parties refusing to perform marries another person while the

Jointly to the prior Contract is still living: it has been determined that such a Marriage is invalid and void with respect to the Wife: this doubt is now settled. 2d Where a man married a Wife having been married to a woman who is still alive and the first marriage remaining valid: such second marriage is void.

3d Imbecility makes a Marriage void: in case of a Marriage when there is a woman now existing the second Marriage is considered as absolutely null and void: and in fact there is no Marriage between the parties: they are not Husband and Wife in fact and need no divorce to dissolve the connexion.

(4th) If in case of a prior Contract or imbecility the parties are considered as Husband and Wife until they are divorced from each other and that terminates the Marriage and abolishes

only to relations both according to the Canonical degree, it may be
an a great variety of deciding, that all
Marriages by persons related in the ascending or descending line are void.
The prohibition concerning collateral Relations does not extend beyond
the third degree computing by the rule
of the Civil Law: consequently a Man
can not marry his Niece: Nor an
Aunt her nephew: but first Cousins
may marry being related only in the
fourth degree. In computing the degrees
you must begin to count thus: from
John Stiles to his father is one degree
and the father to Samuel Stiles the bro-
ther of John is two from Samuel to his
daughter Pole is three: here you must
note John Stiles can not marry Pole:
you must always count to the Com-
mon Ancestor of both and from thence
down to the girl: and if she is not with

Blackst. Comm. 434

in

the third degree you may marry her.
Relationship by affinity is considered within the Levitical prohibitions as much as that by consanguinity. The Husband is related to all the blood relations of his Wife and the Wife to all the blood relations of the Husband. But the blood relations of the Husband are not related to the blood relations of the Wife. Hence John and Hannah Sally may marry Betsy and Susan Jane. Betsy John Sally should marry Bill Sampson & Sally Sally & Sister should marry Thomas Peter and John and Sally should marry Thomas and Bill might intermarry. Or in other words though a Man may not marry his Wife's Sister yet he may marry his Wife's brother's Sister. Judge Parsons says that prevailed in New England as rendering a Marriage void. The imbecility which renders a Marriage void is such as existed previous to Marriage

Marriage and not been as may have been occasioned afterwards by accident or infirmity. The parties in all cases of illegal Marriage may receive a divorce a vinculo Matrimonii in the Spiritual Court and in such case the Marriage is declared void ab initio and the Issue and bastards it should have been before effected, that it has been determined that a Marriage with an illegitimate relation within the prohibited degrees is void = This determination seems to Judge Clem to be repugnant to the principles of the Common Law: which does not recognize a relation of an illegitimate person except the lineal descendants of the illegitimate = Divorces a vinculo Matrimonii are granted in England only for causes which existed the act of Parliament. The Spiritual Court has power to grant Divorces a mensa et thoro

Bolle 500
1. Com. Dig. 594
5. Co. 98

Carth. 37.

Cro. Car. 235
Salk. 121

for perpetual causes: This should be separate Husband and Wife but does not dissolve the Marriage; because after such divorce neither of the parties can marry while the other is living nor can he defeat the Husband of his Marital rights in respect of his Wife's property — She is entitled to the usufruct of his Real Estate and if a Legacy is bequeathed to her it is his. But when in such a case he has attempted to dispose of a trust for money in right of his Wife the Court of Equity has prevented him by an injunction —

Mosse 665. Gilb. 163.

The causes for which Divorce is usual et thoro sued and are still granted are Adultery, Cruelty and well grounded fear of bodily hurt — In all cases of Divorce a Mensa et thoro the issue are not bastards and the Spiritual Court is vested with power to compel the Husband to allow the Wife a maintenance called an Alimony: and to recover this she

Ken. 352. Ld Raym. 64 &c

can

can maintain a suit against him.
Parties are sometimes divorced a vinculo matrimonii for supervenient causes by special act of Parliament. Brooke 432.

The Law concerning Divorce in Connecticut is a very different system from the English. The Supreme Court is vested with authority to divorce for four causes: viz. Fraudulent Contract, Adultery, Wilful absence for three years with total neglect of Conjugal duties, and seven years absence unheard of. In the last case it has been holden that a divorce is not necessary to entitle the party to marry again, the absent party in such a case being considered as dead.

A singular case once occurred in this State: A man had been absent seven years unheard of and his wife married. He afterwards returned and applied to the Legislature for his Wife. Decision was they permitted the

Copies

like to abrogate and abolish the jurisdiction of husband. The Construction of the term Fraudulent Contract by a late decision of the Court of Exchequer which is now abolished, has been confined to the single case of Imbecility (i.e. of imbecility which is not mentioned in our Statute as a cause of Divorce.

The practice of the Ecclesiastical Court of Scotland before this decision was very different from this: true indeed they granted Divorces for imbecility on the ground of fraud: but they also granted Divorces where the fraud was such as to vitiate any other Contract. If nothing more were meant by the term Fraudulent Contract than Imbecility, it contains a very awkward circumlocution to convey such a simple idea as Imbecility. If the legislature meant the word by Fraudulent Contract as the term ordinarily imports, I judge I have shewn the provision of the Statute are not unreasonable.

It seems hardly consistent with justice that contracts which subject Parents offering should be void or treated as void, while the most important of all engagements should be deemed inviolate when obtained by cheat and imposition. Where a man by fraud gets his neighbour's property into his hands the contract is not only void but in many instances the transaction is felony. And may not the common sense of mankind revolt at the idea that when a man by the same unconscionable fraud obtains the person and property of an amiable woman the law should protect and give the same efficacy to the contract as if nothing unfair had happened? The truth is, that a contract which is obtained by fraud is in spirit of law no contract. The fraud blots out of existence whatever embleme of contract there might have been. A marriage procured without

Contract

[illegible]

[illegible] can never be [illegible] valid. There is no more reason for considering a marriage procured by fraud, than one procured by force and violence. The consent is totally wanting in the former, as much as in the latter, in the sense of the law. The true point of light in which the subject should be viewed, as I have already stated, is that the marriage was void ab initio. But still it is necessary to have a decree, since the marriage has been celebrated, that all mankind shall be and consider that such marriage has no effect and lies upon the face of the earth. Marriage, when [illegible] particularly desired and - All the difficulties that is created in the minds of conscientious men at the illegality of separating husband and wife, is removed if the view of the subject is correct: for they never were husband and wife, consequently no [illegible] necessarily ingredient to the

Contract

Contract language. The case of adultery which furnishes cause for a divorce, is the adultery known to the Common Law as understood by the civil courts in England and is where a married person has illicit commerce with any other person, whether married or not. This is different from another kind of adultery punishable by our Statutes viz. Whipping, burning in the forehead with the letter **A.** and wearing a halter about their neck over all their Raiment, until they confess or they die.

This has sometimes been called "Criminal adultery" and can be committed by a man with a married woman only.

When a Divorce takes place for this cause and the wife is the innocent party she is on the death of her Husband entitled to Dower. With respect to these years, and for always, it has been determined that if a Husband turns his wife out of doors, and she

has so that she can not in justly sue
and the Defendant Kim has in a civil
alliance on the part of the Husband:
In all cases in which the Chancery
Court can divorce the divorced is a vin
culo Matrimonii and in no case is the
offspring bastardized. The Children belong to
the Husband but they can not be taken
from the Wife until they are grown
years of age. The Court when the divorce
is on account of the Husband's fault has
a right to assign to the Wife as her Estate
absolutely and forever a part of the Hus
bands Estate not exceeding one third whe-
ther Real or Personal. When personal
property is assigned the making out a
Schedule of the property specially and
decreeing that it shall belong to the Wife
this decree gives the property indefeasibly
in the Wife. If the Estate of the Husband
consists in money so that there can be
no specific Assignment the Court will
ascertain

ascertain the amount of the husband's property in the last resort they could and third decree that the husband pay the wife such a sum and on failure lay him under a penalty which is recoverable in the Common Law Court without any liability to be expended in a Court of Chancery = If sufficient personal property is not to be found and the husband has Real Estate the Court will assign some particular piece or pieces of land to her by metes and bounds and such an assignment is a fee simple of such lands in the wife.

It is to be remarked that the wife's right to Dower on the death of the husband from whom she is divorced is not affected by this assignment of property to her at the time of the divorce.

This assignment of property to her is made for her support during the life of the husband. Dower is nothing but given

her

in by Statute Marriages within the Levitical degrees are prohibited by an Statute and declared void ab initio: and the Issue are illegitimate without the intervention of any Divorce. & the Court of Divorce in such a case is power lad, the Statute having by which term declared it impossible that persons standing in such relation should contract a Marriage, or having carnal knowledge of each other, subject to proper punishment.

In Connecticut a man may marry his Wife's brother's daughter or his Wife's Sister's daughter (as his nearest affinity): application must be made to the Legislature for a Divorce, and they will frequently grant it for Cruelty and a male grounded fear of bodily harm &c: The Legislature divorce a vinculo matrimonii in Adultery & then after judge must prefer: they also

when

then, seem it might perhaps allow the Wife Alimony."

Lecture 2.

1. After enacting the Statute of Distributions a question arose whether the Husband must distribute to the next of Kin a third administration or? To settle this question 29 Charles 2d was enacted. 2d An annuity is granted to a feme sole, she marries & receives the Corrected Arrears accrued pre Dig: this Arrears belong to her Husband as such, and not as Administrator: As to Arrears before Coverture he is entitled to them only as Administrator by the Common Law: but by 5 Ann Henry 8. such Arrears are given absolutely to them. 3d In a case in the 2d Vern. a question is made whether

29 Mod. 20.

Vern. 3 & Co. Ch. 81.

the property of an Husband is entitled to the Wife, Origin on the death of the Husband who has settled on the Wife a competent fortune. It was determined that they belong to the Wife: and the distinction seems perhaps to be this: when an Estate is settled as a feoffment, it has Power but never operates, as a purchase of the Origin by the Wife by the Husband: But when a separate settlement not a feoffment is required will not have the Wife of Power but will operate as a fine or deed of the Origin.

1. A Wife possessed of a term for years marries and then her Husband obtains no right to dispose of their term.

1 Mod. 104

2. The Husband has the same interest on an Lease in trust for the benefit of the Wife which accrued for the separate use as Lease directly granted to her and the profits arising from them during the term

1 P. Williams 18. 56. 80.

land is settled as a jointure for her maintenance of the life after the husband's death. There is a case where a feme sole removed her tenants by-laws to trustees for herself and husband, and reserved the rents, part of the yearly sheet cut and tools, & and other security, then arises the question was whether her husband would hold this estate as administrator as he did her chattels, or in his own right as husband? and it was adjudged that he held such terms and tried a title as husband, and prevailed in ejecting the plaintiff. This case is cited in Otes Part 3d. There are cases in which a different doctrine is held.

Cro. Car. 115. Dyer 73 Freeman Rep. 185 Cro. Car. 115.

Cro. Car. 115. Dyer 73 Freeman Rep. 185 Cro. Car. 118

Cro. Car. 115. Cro. Car. 4

If a tenant for life go to law, that a husband leased for a certain number of years of a tenant for years belonging to his wife, to commence immediately on his death is void.

1st Feme sole for twenty years, the marriage the Husband leases the same for two years and dies before the expiration of the two years; the Executor of the Husband has the rent of the residue of the two years and the Wife for the remainder of the time

Hob. 89.

1. In Brooke Chancery 205. there is an authority which proves that an action on a promise to a Wife to buy her meat for her service can be maintained in her own name as well as her Husband's:

2d The Husband may in an action for a battery or trespass in the same Declaration demand damages for a battery on his Wife, for quod consortium amisit

1. When a Wife is given for a trespass not in other Place, such fine shall be levied on the Husband:

Hob. 88.

2d The Debts of the Wife contracted

before

while pds, are discharged by Bankruptcy of the Husband and in case of his Death, will not survive against Lewis

3. In Sianfin 114: there is a case where a st married a feme who had a large personal Estate, she died and left a Brandchild, a parlr in which it was resolved, that a st must maintain this Brandchild: this case is not altogether the general Law, that the Husband is not bound to fulfill the Duties of the Wife after Devised is at an end.

1 Vent 249. 3 Ch. 305.

4th In an action of Trespass against the Husband and Wife if the Husband is acquitted and the Wife found guilty judgment good cohsentur is good:

Hales 15 White Cro Jac 203.

1. If a Woman elope with an adulterer and thereby forfeit her Dower yet if she is received again she shall have Dower and the Husband is liable for her Incumbrances

Bland 171

1.st Settlement of property upon a wife by Articles of Separation, may not affect the rights of Creditors or Heirs unless there is a Covenant on the part of some friend of the Wife's or Trustee to indemnify the Husband. Court of Chancery has often directed a separate maintenance such it seems reasonable to be understood by all Lawyers and Judges and the Law that in all cases of separation where the separation rests on an Agreement that Court of Chancery has the power of directing a separate Maintenance.

Four late deciding Lawyers have extended this Doctrine generally. 2.d That separate property by bare Marriage for the Wife by Articles preceding the marriage, if a wife elope from her Husband and live in a State of adultery yet

Supp.d

upon

upon a bill in Chancery by the wife for a specific performance, it will be decreed against the Husband

3. A. Husband after an agreement between him and his wife to live separately can not compel her to cohabit with him: The Court held such a Contract to be binding on both until dis- 3 Mod. 22.
olved by the agreement of both

4. A Deed by a Husband, in which he agreed to allow his Wife a separate maintenance was confirmed by a decree of the Court — 5. A Husband gave a bond before marriage to leave his intended Wife a certain sum if she survived him: it was decided in Chancery to be Finch R.
void before other Debts 232.

6th The profits made by a Wife of her separate Estate and at her own disposal 2 Ves. 325.
7. Property devised to a feme may be added to be her separate property the intention of the testator being fairly on
Circumstances

by taking the whole Will together altho' it was no where in the Will declared to be his intention

1. A Feme Covert who with her Husband levies a fine of her Land with Warranty is held in the Courts of Chancery. The Deed of a feme Covert to a fine is an conclusive act in law as a fine would be

Cited 6. 2. The agreement of a Wife to levy a fine of the Land was by Chancery decreed against her after the death of her Husband.

Cases 223 & 225. 1. A leases to Cuddle Cleveland and Wife the Cleveland commits Waste and dies the Wife continues to occupy the Land: She will be liable for the Waste committed by the Husband. Seem if she does not continue in Possession

1. Pl. Cases. In the case of Contract, where the Husband is permitted to join the Wife when he might have sued alone and one of Equity leaning to the Wife:

The point was raised in Carthew 231 pag. that the law rules, not only a prohibition to the wife, although her services are the principal cause of the right of action and in such a case the husband must be joined. In an express contract for work done by the wife, the husband cannot join the wife. 4 Term R. 55.

In a case in Trinity 1795 the Judges differ respecting the question whether the wife could be joined in an action for slander founded on the wife's land. The decision of the question seems to rest on the nature of the injury: If the trespass affected the inheritance by doing damage to the freehold, by cutting the trees in plowing the soil the wife ought to be joined, but in such case the action will survive to the wife on the husband's death. But if the injury was to the enjoyment it would not

not be necessary to join the Wife, because sole owner of action, power is given to her, but her property being the consideration, on of the action the husband may by election join her or not.

5 Ves 260.

3d. Where a promise was made to a feme covert in consideration that she would marry, and she married, it was held that the husband and wife might sue upon it, because if the Baron die sole cause of action survives to the Wife. This is analogous to bond assigned over, where a legacy was given to the Wife during coverture and not collected, and the Husband was the right to receive survives to the Wife. It is difficult to discover the principle on which such decisions are founded, for there can be no question but that the Husband acquires without his Wife and reduces all the effects of the Wife which accrue during Coverture, and in the Wife's Baron the authors are unanimously united to the fa-

vor

of the Wife. It is true that by the Law of the Court where there is no Property, Property to the Wife the Husband may join the Wife but in such a case he pays because the Wife has the greatest degree of interest therein

4th In Croke Charles 399. there is a Lease of an Estate in reversion granted to Baron and Feme and to the Heirs of the Feme in fee: the Baron brought an action in his own name against the Tenant to recover Damages for not repairing the House according to the Covenants in her Lease: it was objected, that the suit ought to have been in the name of both Baron and Feme as both had an Estate therein but the Court held that it was well brought: the words of the Court are "The action being personal for Damages only it might be brought in his name alone": the judgment that the action is well brought is cannot but be for

Ex. Jeff.

the reason given the health is no Estate is given to the wife; it is not an Estate for life to the Husband and wife until he under cover in fee to the heir of the Donor and accordingly the rule known rule in Shelley's case where an Estate is given to A. for life with the terms "Heirs" are used it is a fee simple in A. the words "Heirs" being a description of the quantity of Estate given: of course in this case the Husband took the whole Estate in fee and the wife took nothing, so that the suit could not have been brought in her name together with his.

1. That the Will of a feme covert so far as it respects things in Action" and that her Husband may be made Trustee for Lucia Brooks & of Benefit

2. A Feme Covert may devise her lands to her Husband where it is the custom of the country. There is another case in Brooks Digest page 18. that a feme co

(1 Mod. 23.)

vert

Wright — Devise for Lands, which by ceu
tom Lands were Devisable, but could not
devise them to her Husband because the
Devise being in his favour it would be
construed to be done by his consent: but
there was no objection on the ground of in
capacity resulting from Coverture

Year Book
3 Edwd 3
6 Edwd 3

3d. There is a case in Dyer 65. page
where the Husband had commanded that
his Wife should have power to devise her
real property and she did so devise:
but it was held not that such Devise was
void for by the 34th. Henry 8. she was
rendered incapable of devising Real
Property: and that the Husband could
not remove the Disability created by the
Statute. Many Authorities were fur
nished to shew that the Husbands agree
ment had rendered the Wife capable of Devising
which — The Court observed that all
the cases were of Wills of Personal Proper
ty and prior there could be no Doubt

but

but that a husband could not be given power to devise property but not power to pay, because the statute forbid the latter. It cannot be necessary that the husband should be necessarily disabled or a lunatic, any more than in any other case, for if it be, the provisions of the Marriage Act respecting the disability in the husband to pay apply to the charity.

1st. A husband providing a life for the wife with his land, would have his wife, he will be another to that arrangement: there need be no Deed or Writing for marriage part binding upon the Husband yet if the Husband should pay a sum to a third person in trust for his wife, it would be enforced against Executors.

Dec. 1848.

2d. A Gift to a wife or a Donatio mortis causa payments in gross.

10th H. 1841.

3d. An Agreement by the Husband and wife, previous to Marriage, is not inquired

Eliz. 1818.

extinguished by the Marriage.

In Wrongs to the Child of Parents and Children it was holden by the Court that Marriage was a contract made in the life time of the parents and by the law. Q. of Selbourne made by a woman before Marriage of her child to her separate use without the knowledge of her Husband, will not bind him. A child is a Witness to prove his own Bastardy. Q. of Wife can not be a Witness either for or against her Husband, although all parties consent. Although it has been frequently said by the Judges that the Crimination in Criminal Cases "that the Wife was a good Witness on an information against the Husband for personal abuse" was not true yet Judge Tracy says he has not been able to find a single instance in point against that Fact. In Criminal cases they have

Marriage

Bastardy

and

Forced and Forced

from our three dress and some of forced and left to the left. The Pretension is some to stage and the time confirmed further case of the Ch. State in Stage and in Early Times. Any the affirmative and to by a Conversation for an information and said the Husband for personal and other things there to be?

Mr Marlborough's office of Secretary Mr Fraser strong that when the Infantry Rally due to the she can not by putting on Recommendation deprive her Husband of the benefit that might accrue to him by being Commander Chief but that it is otherwise of great advantage that the Man in Secretary for new be called to provided to Commission that as as they go to the head of this of the Stage Cabinet. it appears to Fraser that the Recommendation of this Dalrymple as commander in the first place in question to for the Chief and right powers by Cabinet is no Dear than the right the

Commission

residuary legatee after the death and
heir of the wife it certainly is
not a hopeless night at Bowman v. Bowman
L. Although marriages generally protection
wages which may obtained by Dower of
the bonus wife has been the subject of
many decisions.

It is difficult to conceive how a single
contract can be made to be more important
which can be made, it could be rather
when obtained by Dower, and whereas
the same time all other contracts obtained
by Dower and are. The authority also
leads us that marriage by an idiot is void
and appears in pleading that an
idiot can consent to marriage: If
his consent to this contract being void,
surely is he not bound by all his contracts
which are the bonus by them?

When a divorce is given to a divorced
husband it does not affect the contract, but the
husband is personally liable.

Vide Vin. Abr. 55 and Authorities cited

If Adultery is a divorce by the canon
of Scotland, it is only a Divorce it is
only a Divorce a Vinculo at them and
neither the rights of the husband or the
wife as it respects property except only
what is acquired by the personal Ex-
ertions of the wife, are affected by it, and
the wife shall be entitled to Dower?
5. In England it has been held and
that in case of Divorce a vinculo
Matrimonii, which proceeds on the
ground that there never had been a
lawful marriage; if the husband was
entitled to the wife before marriage
after the divorce he is still a Bachelor
and also the property which he received
with his wife belongs again to him: yet if
the property has been conveyed by the
husband bona fide to others the rights
of such third persons are not injured.
6. A wife divorced a Vinculo at the
Ecc: Court is not entitled to the administra-
tion

Ecc: Cases 53.

Bailey 504.
Ch. Sd. 408.

Paran and Jane 215

of her Husband's Estate, not to a Per-
ticulary plant thereof ;-

Parent and Child

1. Lecture

The title will include that of Guardian and Ward according to the Common Law and our own.

A Minor or Infant is a person under the age of twenty one years. The age of minority is fixed at different times in different Countries. By the Roman Law it was twenty five. We will first consider the privileges and disabilities of Infancy in the new Children. 1st As to Crimes.

1 Bl. 463
2 Ch. 104
" 359

It is an invariable rule of the Roman Law that no person under the age of seven years can be punished for any Offence. Such a person the Law presumes to be without any Will.

1 Bl. 220
4 Co. 25
Hawk. 1

No person can be punished for a crime unless there is an intention coupled with the Commission of it. If there can be no Will in this case there can be no punishment

at common law an infant may be punished for a crime ~~[illegible]~~ as any other person, because he is then presumed to have arrived at an age sufficient to know the nature of his crime.

Between the age of seven and fourteen it is always a question of fact whether he is capable of committing a crime.

R. v. Lee 28 Q.B. 73. R. v. Jones 1 Cox 161

The presumption law is that he is not capable. But presumption of law like any other may be rebutted. The rule probandi remains on the prosecution. The presumption that prima facie an infant under seven years of age cannot be rebutted. It is a presumption or presumptio juris de jure. According to Coke, by presumption is meant before and after the age of fourteen years and six months. Holmes second and by time it is in case of the child, after that it is a question of fact. The difference may exist only until the

burden of proof in the latter case, from the prosecutor to the infant: but there appears to be no such distinction in the English Law though it existed in the Roman Law: the rule is as laid down above. It is observed in Blackstone and Bacon that in general infants are [illegible] to these [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] however infant [illegible] from [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] shall not be [illegible] for [illegible] [illegible] [illegible] [illegible] in the administration of [illegible] that an infant shall not be [illegible] in his own confession without [illegible] [illegible] and [illegible] [illegible] of the [illegible] of [illegible] [illegible] [illegible] condition. [illegible] having [illegible] [illegible] ground

1 Bl. 23
Bac.
Infancy 25
27

4 T.R. 119
3 Bur. 130
1 Sale. 20
2 Ld. 31

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

the Clause: or it is not necessary to do
at Common Law. This is not suffi
cient. The true reason is that the Courts
of law in construing penal statutes
will not allow the forfeiture of Infants
at Common Law to be extended by more
implications than are the necessary con
sequences of public efficacy
If. We are now to consider how far
Infancy and Idiocy for their bad or good
conscience: Mr. Jones considers they are
liable at any rate Civilly if they act
contractedly with fraud: now the reason
is that the Law in redressing injuries
does not at all regard the intent
it will extend to the act and consequence
to injured. The reason of the contrary
but on Criminal Injuries does not so
the enquiry is not whether he intended
to do the Injury but whether he did it?
Obnoxious to be dead they untoward pray are
made to plead the contrary. There is

Ryot 21
1 Ganter 5
Ellen 557

and

3 Bin. 137 an action to the Peck, where an infant
four years old was sent from an old
parent and mother ~~[illegible]~~
[illegible] to say not understand that the in-
fant should not be. There is distinction
in fact, after between the case of
public and private wrongs: the maxim
belonging to the case of custom that
a person should be punished when
there is no degree. But in the case of
Cro. Eliz. 9 a Common Objection that the
party injured should have a compen-
sation — it has been argued that an
infant possessed of property is liable in an
3 Bac. 139 action of slander. And from the cases
it has been inferred that an action that
age is not bad — It is inferred is not
figured and further there is no case
where an action that a person has from an
[illegible] Doubt according an In-
fant is liable in an action of Slander
whenever he is called upon to pay

and

then he would be exempt from all obligations to the Infant's Creditors. The Infant is not liable on a single Action for his own wrong, nor can he by his privilege, as to Contract, avoid his Engagements. It would be absurd to suppose him bound in a Contract, and by a personal tort he could not make a Contract, say it to be deemed liable as a Common Cheat, whenever he is polite enough in one of these cases to say only Coldam that an Infant is liable only for those tort, that and also and will second degree of Criminal. This cannot be true for he is subjected to an action of Slander when there is no degree of Criminal. All the cases are collected in the Court of Queen's Bench that an Infant is not liable for his fraud. Lord Mansfield and Kenyon, Chief Justice of the Peace. The former says the privilege of Infancy would prove as a Shield.

Shield

3 Car 1802. Pratt's Repr. 233. Shelt and not as a Bond. The latter says an Infant would be liable in an action for providing in Contract if it is a fair or Debtor his Lord was an Infant one. ~~Action providing until second action not be protected against an infant~~ Where the cause of an infant, respect be made plain by being sued in for breach of contract for the recreation of the Action of the Contract. It was once holden by Judge Parker that if an Infant would take upon himself to trade and act as if he was a person of Infancy should be admitted because they would be to take advantage of his own fraud. This cannot be law as laid down for if it were an Infant might be sued on his Contract and they ought would bind him in all Cases. In some cases Chancery will decree an action to be good against an Infant in order to prevent the mischief of his fraud. This is

1 Ch. 205

Ch. Ca. 50
3 Term. 586
1 Term R. 70 71
2 Ep. Ca. 59
Cab. 469
1 Atk. 358

1 Ch. Ca. 330

a case

a rule of Equity and a Court of Law never would do it; it is left to the discretion of the Court: A Court of Chancery never can hold an Infant to his Contract, to prevent the effect of fraud on which it is absolutely void: because that would be to create a bargain for the parties. The Cart rule applies to the Contracts not which are merely voidable. Of the Infant's liability for Contract, and certain other relations — ~~At Common law~~ the age for choosing Guardian in both cases is fourteen. Before this time they have no right to choose a Guardian: According to the English law an Infant may be an Executor at any age: even an undown infant may be appointed, and such appointment would be good: But though he is appointed and has all the rights of an Executor, yet he can not

Fonb. vol. 1 p. 84. note

2 Lecture 5

Infant Law 3

5 Coke 30 Cartt 186 Pow. 338 Fonb. 2 5 3 97

sauta-

the duties till he is seventeen years of age: Consequently when one is appointed under this age an administrator durante minoritate ought to be appointed. No person can be administrator until he attains the age of twenty one years: and the reason given is that an administrator must give bond for the faithful performance of administration of his office and it ought to be approved by Surr. Executors need not at Common Law give bond: for he is not appointed by Law but is made so by the appointment of the Testator himself. But in Chancery it is a question whether a person can be an Executor under the age of twenty one because by the Laws of this State an Executor is required to give bond for the faithful administration or execution of the duties of his office. The age of Consent to Marriage is fixed at fourteen

and

and in females twelve years: and no person under these ages can be bound by act of their Parents = If one is of age and the other under they are either may dissent because the agreement ought to be mutual: But according to the English Law a female may be married at seven years of age: and if when her husband dies she is above the age of nine she may be married.

Contract of Marriage

1 Bl. C. 453
Stiles 257
1 Mod. 70
Lit. S. 36
2 Bl. C. 13

Rates The age of disposal of personal property in England is said to be by some fourteen in Males and twelve in females - By Stat. 15 Ed. 4. c. 18.

When capable of disposing of personal property

The latter opinion seems to be that which gives the age at twelve and fourteen. If of their age and sufficient discretion they may make a valid disposition of personal property = Full age as was by law defined is twenty one years: this is completed on the day preceding the anniversary of the day

2 Term 13
4 Co. 60
1 Mod. 89
2 Ward. 318
B. Dig. 316
1 Bl. C. 453
2 Co. 57

Bond

Co. Litt. 84 a. 171 b. 172 a. 625. Com. Dig. Ch. 144. 186. Ld. Raym. 480. 1 Salk. 43.

birth the law reckons no fraction of a day: the day of the birth being one intire day it cannot be again seen it makes no difference whether the heart was born the former or latter part of the day:

Concerning Contracts in general rules that no person under the age of twenty one can bind himself by a Contract. Regularly the Contracts of Infants are void and not binding they either void or voidable. But if an adult makes a Contract with an Infant he can the adult is bound by it whether the Infant is or not if then an action is brought on the Contract the adult can not plead that an Infant joined with him. The adult whether he makes a Contract with the Infant or joining in making a Contract is bound and can not take advantage of the non age to avoid the Contract. The Infant alone is not a sufficient con

Co. Litt. 58. Raym. 85. 1 Salk. 27. 5 Mod. 248. 1 Mont. 4. Co. Lit. 172.

Sideration

to enforce the Contract: This is a
consideration in Chancery: who will
compel a specific performance on
the part of the Adult but Court
conceives that this Court would compel
the Infant to a Equity = This is the gene
ral rule, tho' it is not an universal
one, for if the Contract is absolutely void
it could not hold = The chance of a be
nefit is always sufficient consideration
to raise a promise: This is the ef
in all voidable Contracts made by an
Infant and an adult, but in void Con
tracts, no obligation, on one side, there
is no consideration to enforce the en
gagement on the other: therefore if an
Infant makes a Contract absolutely
void, in Legal Morality there
being no consideration to enforce it, the
Court is not bound: And it seems
well settled that if an Infant after ma
king such a Contract receives the

Ex. Eq. 308
1 P. W. 2 Com
39. 40
9 Ves 393

Ex. Eq. 308
1 P. W. 2 Com
39. 40
9 Ves 393

own

consideration promised towards him
still and afterwards among the Con-
tract he was not found to realize the
Consideration which he had received.
The Sum was a gift to him: It has
however been disputed in this case
whether an action of Trover would
not lie where the Consideration was
specific, as an action of "assumpsit"
where money is paid: yet
the grounds of the Infant's case, the Court
do not warrant the idea, that an ac-
tion can be substituted. Such proce-
dures might injure the Infant of his
privilege, or enable him and the a-
dult to change the nature of the Con-
tract and the consideration from that
and be specific to one of a specific
nature, and allow the Infant to refund
the consideration out of his own Estate,
in which manner he may always con-
tingle the rule of his Estate, the con-

Bac Ab Infant D
3 Bac 140
Ld Raym 1417
Cro Eliz 469
Cro Car 119
Lev 235
Sid 315

first

found Cases to bear with him. For it is a general rule that Infants cannot be bound by their Contracts yet there is one exception to this rule viz. in case of Necessaries. It is a general rule that Infants by their Contracts may bind themselves for necessaries by Contract. These necessaries consist in several enumerations and heads which are all included in these five Viz: Food: Clothing. Lodging: Medicine: Instruction. or in a valuable trade. The reason why an Infant is not bound by his Contract is a fear that he will squander away his property: Some time must elapse: and the Infant is Dead and the age he must always be expected in the case of Necessaries where a contract seems exists. These Necessaries must be absolutely necessary for him at the time of his contracting: and not

1 Bac. Ab. 345
Co. Lac. 172 a
1 Esp. 91
1 Bl. R. 166
8 T. R. 578

Co. Lit. 172 a
Co. Lac. 172 a
Esp. 91
Bac. 345

what things are necessary must be determined by husband's situation and rank in life. The prince and must always be honorable and in all cases where the plea of infancy put in the matter of fact it is left to the jury whether the articles furnished were necessaries or not. Hence it is

6 Mod. 178. Cro. Eliz. 499. Bac. Ab. 1101. Cro. Car. 383. Com. Dig. 580. Ward 149. 1 Ld. Raym. 148. 6 Bac. Ab. 14. 1 Burr. 58

that when the Defendant pleads in bar of the Plaintiff may plead specially that they were furnished as necessaries whereas were it a question of law the Plaintiff would have to plead specially in his replication what the things were that he prosecutes.

Most any kind of things under these restrictions, be they luxuries or necessaries. They have the same power to contract for them (as for the life and Children) and the husband, have to their Contract, tho' an infant, and they were made for himself. consequently

Comyns Dig. Infancy. 153. Ld. Raym. 148. Id. 151

he may bind himself for debts, or
obligations for their comfort and convenience: the Infant is also bound by the
Contract of his Wife even before marriage: Yet the Wife herself must have
been bound. The exception cannot be
understood with certain qualifications
for no Infant can bind himself for necessaries, if he is under the care of a Parent or Guardian or Master and duly
provided for: Neither is it true that he
may bind himself if the Parent, Guardian or Master does not furnish such
necessaries as he may lawfully and ought:
From what has been said it follows
that an Infant can bind himself only
in three cases of cases: 1. When
he has no Parent Guardian or Master
who is bound to provide for him. 2. When
he has not a out of the hands of his
Parents: 3. When he has an and is without
a Master but is with provided for that
he

Bacon, Ch. Notes, 95.

2 Kent C. 1335
2 Pick. 55
Bates, Ref. 22 P. 2.

he is suffering or in danger of it. In either of these last cases, the Parent Guardian or Master is liable on the contract. The Infant is not in strictness bound even by necessaries, but his express contract: because he is not liable to the extent of his contract of course, but only to the amount of the necessaries furnished: In the case of an Adult who makes an agreement to pay a certain sum for goods he is bound by it although the article are not worth and half the sum he agreed to give, but in the case of an Infant he would not be so bound: it would seem therefore that he is bound when an agreement or quantum meruit lies that implies a law

Falck. 10 Co. Inc. 500 Coke. 171 Co. Ent. 504 Ld. Ra. 99 m. 92.

The Infant does not bind himself in any way unless that an Adult can also be necessaries. This will appear from the following Testimony which are on the ground that the contract

Declare

were made for necessaries: 1. An In- Cro. Eli. 164
fant can not bind himself by a Ca- Cro. Eli. 220
nal bond. and they however enumera- 1 Pont. 34
tion the consideration may be:
2. An Infant may bind himself by a 3 Ker. 939
Single Bill, given for the precise sum 1 Bro. 86
dated seal, given under-hand and sal 86
3. Of a negotiable note when actually 1 Ch. Ca. 182
negotiated, an Infant is not bound. 1 Str. 445
1 Hob. 41
4. By a note negotiable and not actu- 1 Wm. 405
ally negotiated he is bound 1 Com. Com.
3 L. 34
5. By a Bill of Exchange not negotiated 1 Ch. Ca. 345
he is bound, but when actually nego- 2 Salk. 66
tiated he is not bound: As between the 2 Str. 8-20
Drawer and payee he is liable. 1 Smith. 45
6. By an account stated which is an 1 Atk. 36
liquidated and signed by the parties 2 Salk. 69
the Infant is not liable on in an action 2 Ver. 85
of Assumpsit contributed, founded on 1 Ver. 344
an account stated, he is not bound: Ver. 35
3 Bac. 134
1 Rep. 40
The enquiry now is, what and the reason
of this distinction. We will take the

cases in their order: 1. Why an infant can not be bound by a penal bond. The reason given in the Books is that the penalty may operate to his disadvantage as it may occasion a forfeiture. But is not satisfactory, because relief might always be had against the penalty. The reason in the true Consideration is not known: it cannot be told whether the bond was given for necessaries or not. When a penal bond is executed the Consideration never comes to be inquired into: and therefore the Infant would at all events be obliged to pay the bond which he has executed without being permitted to deny that the Consideration of the bond was necessaries. Thus the priviledge of Infants would be wholly destroyed. The reason then which prevails through all the cases is: If the Contract is such that the Consideration is non-existent he is bound. but if the nature of

Wms. P. 176 Co. Ed. 172 Inn. 43 Bac. 33 Chitty 20

of the Contract excludes all enquiry
into the Consideration if he is made
bound. Q. By a single Bill a man
bound himself to bring that money a
Single Bill is not examinable: but de
facto was; and at the bottom that the
Jude was laid down that no might
bind himself by the auxiliary words
to bind no case, where a Single Bill
not examinable where an Infant is the
Obligor. Q. By a Negotiation note regu
lated so is not bound because as between
the Drawer and Maker no action can
be had upon the Consideration: If them
be any found the principles of the Law
Merchant would be overthrown. As
to as the principle are not avail
Obl. ought to be made in and regulated
he is bound but it because the compe
tentation may be enquired into while
it continues in the hand of the prin
cipal: it is a mere single Contract

1 Rol. 380
484. 436
Sir J. 185
17 Rep. 1
Arguman

2 Rol. 4
Keja. 85
Bengt. 6
1 Ld. Ray.
Strod. 65
Salk. 9
1 Str. 67
Carthew
6. 241. 216
4 M. 112
1 Ld. 282.

on the principles of the Common Law.
If by a bill of exchange before negotiated he is known and altered he may
Bona fide holder without notice
not stand on the same footing with a
Gatewood v Pate: 8 Ala. an account
Cotch. 18 Johns. 85 Pfac 519 Ottes 25 Dunb. 25 Pitch. 4 H. 64.
stated the infant is not bound although
the debtor may be bound into: but the
reason of the rule is, that it was entered
at the time when it was not bound
into: and this is one of high power, say
Lord Mansfield, where the rule con
tinues after the reason has ceased.
These different cases are learned to sub
stant the general principle: but still
there arises a question whether in the
cases where by the terms of the contract
the infant is not bound he is bound by the
original debt. Contract? as in the
case of a joint bond: By this rule and
security arise can be found in another
form of pleading. Upon it for the re
covery which arrested the Bond.

Plea

This depends on another question whether the bond does or does not merge the Simple Contract? And this on another whether a penal bond of an Infant is void or voidable? The decision of this question will decide the first one. If it is voidable it does merge it: if strictly void, it has no effect at all on it: This question will be considered more fully under another head or division of the subject. Suppose the bond is void: then Mr Gould conceives the Infant is bound upon the original Simple Contract: express or implied: This is agreeable to principles as well as analogy: A Single Bill does not merge the Contract: the Creditor has taken a Security which is not void and by this or nothing he must recover: An Infant can not bind himself for money lent, unless the money is actually laid out in the purchase of the necessaries.

Cro. Ja.
175. 176
1 Com. Dig. 208.
[illegible]
5 Com. 1878.
[illegible] 1462.
analogous

[illegible] 164.
Bac. Abr. [illegible]
[illegible] 184
1 Com. Dig. 218.

Com. 3 [illegible]
10 Mod. [illegible]
1 Salk. [illegible]
386
10 [illegible] 58.
4 Bac. Ab. 318

Bell's Ex. 5th Ed. 563. 558.

of Law the Land is not known for this reason, unless the Person himself is founded in mistakes, in which case it is considered rather as a punishment than a benefit; but in Slavery, the Blood of the master is actually expended in necessaries, it bound & reduced the value of the necessaries: but as the man can never be not the whole value of the mortgaged land: Here the loss of the mortgagee stands in the place of the loss of necessaries, and will recover in proportion as the Lessor would have done if he had furnished them on credit which would be wrongly deducted for necessaries: It has been decided that where an Infant was a Bachelor

Bacon's Ab. Infancy & Age. Bacon's Ab. Ex. 190 Bac. 188

and purchased Actions to recover his wages he was not bound: The Infant Burnet, he has not sufficient discretion to make a contract and that the Articles found were not necessaries:

So also an Infant is not bound to pay for repairs done to his buildings. These repairs are not considered as necessaries and may be made by the Guardian. It has however been decided, that if an Infant takes a lease of a House or land and lives in the House till the next day arrives in improving the House in the that day he is liable in either case provided it is reasonable and not exceeds one year's rent in an action of Debt. The House is looked upon as his from the first day of Taking. The Guardian may be sued and can never plead the Discovery as it protects Lessees. For necessary education an Infant may bind himself but what is necessary in our Law would not be considered so in another. The kind of Education differs according to the rank of the person. A Liberal Education is considered as necessary

3 Salk. 198.

Co. Lit. 172 a
2 Black. R. 1314
Cowper 65

and

and proceed on the Repeal part of the
Plea, we think it would be inconve-
nient to the Court for four reasons. It
has been decided however in the Eccle-
siastical Courts of that Province and Damages are not a proper part of an Edu-
cation. It does not matter whether this
could or not be done with reli-
able to the circumstances of many
Parents, if the Plaintiff was indeed in an
Equitable Interest to the Plaintiff
he is bound to the rule and can maintain
it upon strength regulations he is pol-
lowed on his Contract result from na-
tural Ties or in the case of Illegitimate
Children an Agreement of Parents.
The Plaintiff when Defendant in Chan-
cery is bound to a Decree for account
from a Court that is said to be entitled
to allowance from after he arrives at the
age of twenty-one years and on arrest
The Parties protection Regard Time.

Mathews v. Ex. 329.
Ex. 329
Ex. 329
Ex. 330
Ex. 330
Ex. 331
Ex. 331

Or are an Infant when Plaintiff in Chancery is as much bound by a decree passed against him, as an adult would be: unless there appears to be fraud in his prochein ami. The reason of this distinction is that an Infant Plaintiff comes before the Court voluntarily; but an Infant Defendant is compelled to appear: An Infant can not bind himself by a Contract except in the cases before mentioned: yet when he acts as representative or executor of person who is bound, and in these cases the general rule is that such act of the Infant, as not affect his own interest but serve their benefit from an authority which he has a right to receive, and generally speaking: though an Infant Trustee, in a Sale made by him not affecting his own Interest to person other having obtained full Sale

and

and

annul a Contract which

(Stg. 69. 7 Feb 608. Ch. 95. 6 Ing. 2)

is made during his minority, and which was not binding: and it was ruled that a promise made at his full age, when he promised to be bound on a contract made during minority: the contract however must not be void, for they can never be satisfied of an infant giving a security during minority which is absolutely void, and after full age, when a promise they provide only by the determination on an action on the original parol contract, supposed to have never set up the void warranty or security. When then the instrument is absolutely void the subsequent promise must be the foundation for another action: but in the case of voidable instrument as in an express bond his action on the instrument and a plea of the nullity of a promise of his full age, where a person after full age makes a new promise in consideration

(Ib. 11 Rust. 137. 6 Bac. 134)

(Ib. 11 Rust. 137. 6 Bac. 134)

of a contract made during infancy
he is bound no better than he is
first at the promise. To a plea of infancy
a replication of a promise after
full age is sufficient as far as the plaintiff
is concerned to avoid it by proving a
second promise; he need not aver further
that the defendant made it after full
age: it will be presumed that he was
of full age and the burden of proving the
contrary rests on the defendant because the plaintiff
may not know his age. If an adult
is jointly interested with an infant
in a claim, and the adult obtains a re-
covery of it, in his own name, merely
he will be deemed a trustee for the infant and the infant
may claim his proportion of it if it be
collected, but he must sue if it must be
collected: the reason is that there are
separate powers and the contingent
land is a gift in the other blood: if an
infant

Cp. 164

1 C.R. 64
Cp. 164

Cp. Fuller v. C.S.W.

Brett and Opel. 480.

infant is even not a contract to which he is not bound to insist, but gives it in evidence under the general issue. It cannot be disclaimed in a summary way as a bona fide part of the section:

Section

What Contracts may be infant are void and what merely voidable. All Contracts by which infants are not bound are either void or voidable. The distinction between void and voidable is somewhat artificial: but the consequences resulting from it are important. It ought to be presumed that if a law gives Courts have inclined to consider such Contracts by which infants are not bound as voidable strictly and not as void: and this is of advantage to the infant because it leaves it in his power to avoid the Contract or to ratify it, when he is full age. Therefore they prevent

them

there are few cases in which through fear of an injury to the Infant by Contract will be considered as directly void. The first general rule laid down on this subject is, that such Contract, in which there is an apparent benefit or semblance of benefit; are void prima facie; and those on the other hand where there is no apparent benefit or semblance of benefit are void. This is not a strict rule, the governing rule; the first or affirmative part is undoubted by Lord Hardwicke following that the Contracts of an Infant are only voidable because they are always presumed to be for his benefit. But Lord Mansfield says he knows of no exception to this rule. If this part of the rule were not true, he could not be a Bound Monitor or Tipstaff and he could Contract only in no other way than by Parent. Upon the second principle a power of allowing given by an Infant

2 Str. 582.
3 P. Wms. 511
1 Bro. C.C. 333
Prec. Ch. 310
1 Bro. C.C. 38.
" 54

Bunb. 220
2 Burr. 2.3
1 Str. 2.3

3 Ken 808
Ayl. 30
Ch. 1. 37

Infant to avoid Bargain is only voidable: and it has lately been decided that an indented servant under Age to act as a Servant, was holden invalid because it might be for his benefit. Hence cases are cited to illustrate the general branch of the law. The latter branch of the rule appears rather universally true: it is therefore not a criterion. It has however been said that where an Infant made a lease without receiving any rent the lease was absolutely void. This has been held void as Law and from time to time considered as such, but there is not a single decision on this point as said by Lord Ken. notice in Court: Consequently it was not advisable to be well grounded, and having been over sought, claiming to the contrary: Littleton himself says a lease made by an Infant is

2 Ken 1006.
Ayl. 95
Ch. 1. 30
Ell. Cas.
349

voidable, as it is void. The is void
Parent with reference to reserving rent.
There is then a weight of authority on
both sides of this point of the rule. Lord
Mansfield denies the lease mentioned
above to be void: the Judge not taken up
the latter branch of the rule and pro-
nounced it to be void for it many
times is true: but has advanced some
[illegible] which are entirely
from "that a lease made as above is
not void: 1st. The days he may make
a lease without reserving rent to his
heir: Now if this lease was strictly
void the Defendant, or any who is a
Stranger to the lease, might take ad-
vantage of it: but if it was only void
voidable, it cannot justly a general
rule that infants making and instru-
ment void may be given in evidence:
An infant defendant may take ad-
vantage of his own infancy: a minor

Lev. 78
Moore 78
3 Bac. 535

3 Bac. 80.
Smith v. Fox
Moore 20

and

void the Legacy. This proves affirmatively that the Legacy of the Infant is not void but voidable: for the general rule is that where the Legacy is absolutely void the Defendant may take advantage of it. It is then clear on principle that the Legacy of an Infant devisee is not void, it only voidable: they argue again that a penal bond executed by an Infant is void because a penalty can never be a benefit or standard of benefit to an Infant. There is indeed Bentley thinks no necessity that that the bond should be void any more than a Single Bill: it may be done not knowing that it is penal. The reason that a penalty can never be from an Infant, nought is or has ever been decided to be a good one: let they argue all bond issued in England be void according to this. There are some further considerations of this kind: on principle how

ever

Opt. Could consider it as voidable if Com. Law an Infant can not plead nor be sued to a bond made in infancy in evidence unless it but must plead it specially: though a Some Court may in this be of a general rule, that relative matter are disclaimed absolutely void, except to be made in evidence under the general Issue: So this rule there are some exceptions: But what furnishes a strong Argument against the idea that a final bond of an Infant is strictly void is this that an Infant having made a legacy in his Will for the payment of his debts the Court of Chancery will order that the penal bonds be paid, on the ground that it is ratified by the testator. But a strictly void bond can never be ratified: In the opinion of this Court then this bond is considered only as voidable: In England it could be con

agreed: There are three cases adduced in support of the latter branch, but they have been overruled and Mr. Justice Blackburn in effect at last overruled them: it is in its nature a bogus one: and is perhaps a qualification of another rule. The former part of the rule relates chiefly to the purchaser. The branch of it is contradicted by principle and authority, by universally considered as correct. The latter branch relates chiefly to those contracts which create a debt or duty or owing and interest from time: such as Bills, Leases, Insurance, Obligations, Interest with the time, converging away his interest. The fundamental rule of discrimination is this. All Debts, Gifts, Grants, Sales, Obligations, engagements, infants which do not take effect by immediate delivery are void. That in the other hand which is to take effect by immediate

Cases

and are relieved from avoidable
Pain. We may lay down position
tracedly Litteton. We will begin
with this by a few examples. If an
Infant makes a disappointment this is one
of frequently avoidable and not avoid. But
what benefit or recompence of benefit
is this to the Infant according to the
[illegible] as laid down above? Pure
ly there are no advantageous benefit
to an Infant in enjoying every his
Pleasure. The principal is the
this [illegible] can well be by [illegible] for
[illegible] but must wait till he arrives
at [illegible] age and then offered an equi
valent as he pleases. [illegible] the [illegible]
[illegible] is [illegible]. This is
this merely avoidable. Because the child
complain by delay and he should
not immediately consider his [illegible]
as a [illegible] after he has done this so
[illegible] [illegible] found [illegible]
this

Prov. 6.23
or 32-33

[illegible] Prov. 18.5
[illegible] 19.5 or
[illegible] 19.42 or
[illegible] 69

Contract is mutually voidable: the Parent is the aggrieved: it is a strong act on transfer which shall not be compulsory on a person the other party stranger: if the Parent was, he might insist upon it against the other party but except in the instance of the last mentioned case the Contract is void.

Upon the Delivery of Paper to Each Other.

But Parents are Secretary if presumed to be Kept but they must deliver it: the Contract is void. And if the Parents have not that power of delivering it, a Stranger. Deed if delivered: the words in the Rule "which take effect by Delivery" are important as they respect the Delivery of Deeds and other affected to Bail. They are also uncertain. Hence the difference in Deeds between those which are inter and those which delegate a power. The former are generally void as because they are not delivered: the latter generally not because they do not so bind.

then

enable another to carry it into effect according to this rule, Gifts, Grants, Leases &c. are only voidable, as they take effect on delivery: a Power of Attorney by an Infant is void, except in one case, which is to accept Service on an interest: because it does not convey an interest: it does not take effect by delivery. Lord Denies this distinction but his words: He has no agreement on his front but only says that the distinction is the former. The general rule is that the Contracts of the Infant which take effect by Delivery are voidable: But this rule is to be connected with the following one: Whenever the Contract is in such a way Detrimental that the interest of the Infant cannot be preserved by keeping to his distinction the Court are to consider it as void tho it takes by Delivery: This case is very exceptified in a case

3 Bac. 1808. Aug 15 1808 3 Ch. 58 46

1 Bac. 26 35 43

3 Bac. 1808 1 Ch. 379

one

3 Ind. 364 in 369

in Blackstone County, on Cotton and Noble in the case of a bond into which her father & Porter and afterwards maintained an action of Slander and Battery against him: Held the general rule cannot be altered by her privilege as the law stood may be pleaded: but it is not so in the case of a penal bond, for here it can be pleaded: Executory Contracts by an Infant and in general only voidable: as a promissory note Foreign Bills & Bills of Exchange: & Penal Bond is not Executory Agreement and by only voidable: Bills of Exchange & Order Not or bond Executed by an Infant to Submit to an Arbitration is voidable and not void: they are not therefore necessary for Contracts of Infancy which are Executory. The certificate ought necessarily to be read and recognized if this Court is the same

of a "Power of Attorney" and the same
in Relation of a Contract in which third
persons in the adverse party may
take advantage of it. But if it merely
inures to the party for whose benefit it is made or in his reference
tatives can take no advantage
of it. This is one distinction of
difference between Contracts that are
voidable and such as that are void
but of an Infant sell a Horse, and
receive it too one can treat the other
wise than as a binding Contract upon
the Infant or his representatives
But if he had not delivered it the adverse party and Stranger might have
refused to pay it and consider it
void: and on Trover may be
brought, but it may be offered in
the last Resort that the Seller
Contract of an Infant and be bound
not no stop for only by the Infant or his

Reference

2 Johns. 108.
Strange 938.
2 Q. B. 511.
1 Ins. 70
Wilmot 24
Com. Dig. 38.
Ins. 50

Reference

Selected

8 Coke 125
1 Bri 3. 37
& 337
1 Coke 55.
3 Bac Ab

Observations. and according to the principle by which law decides the conveyance of real Estate is made to an Infant only he himself during life and his Heirs claiming under him of it: and his remainder man and possessions can not take any advantage of it, and come into possession: they had are almost part with Lord and said Step Contract for an Infant which and only voidable may be affirmed when he comes of full age: and this confirmation may be either express or implied: the former needs no Defining. The latter are expressly bringing of the working fund of the Contract: "that implied confirmation" taking and consideration: as if an Lease is made by an Infant. Now if the Lessee continued in possession after the Infant comes of full age the Contract is thus ratified. If the

Infant

Infant is bound and continue in pay
service after full age he they protestes
his Contract: and of course his second
Command and is liable for the whole
rent that has accrued during his
minority and afterwards for the Con-
tract taken effect absolutely. This
case of a Lease is only an example
of a confirmation for it is a general
rule that any act of an Infant after
he attains full age conducing and in-
tent to confirm his right or privilege
of Infancy ratifies the Contract. say
if he take every advantage. But
if a void Contract cannot be rati-
fied and this is one of its characte-
ristics there you perceive an essen-
tial difference between void and
voidable Contracts: if an Infant takes
a new Lease of the same land and the
same to taking not inconsistent therewith
as Principal and the term he and see-
vant

Co. Lac. 320
2 Bac. Ab. 69
5 Bac. 554
1 Bro. P. 132
2 Vent. 343
1 Ld. Raym. 731

Dig. 390
3 Bro. 65
Co. Lac. 380
2 Vent. 213

Dig. 54
2 Ld. Raym. 705
1 Ld. Ray. 75
Bunc. 454
Cro. Jac. 201
2 Ld. Ray. 80

1 Atk. 354 validly they would take, though it is absolutely void. There for if there is distinct between Contracts which are void and those which are voidable. Some case of the former is where the Infant may avoid his Contract, which are the cases where generally are to be said void. Upon Infant by enough his interest by giving on Bond and he enough he should have the Conveyance and he should of Land receiving the money but not after: and the reason is because receiving his money the age is continued but implied and there is nothing against the Infant: this is the reason of judicial consequence but there is a private and different between this and a Conveyance by matter in fact for if there matter should it is void as the Infant may avoid it. Conveyance by act

Ibid. 355. Co. Lit. 172. b. Co. Litt. 172. a. 2 Roll. Abr. 788. 2 Co. 3

Co. Litt. 172. a.

Marriage in prejudice of a legitimate child
contracted either during his minority
or after he attains full age.
But it is now settled law, that he can
not avoid the act of full age, because the
marriage is as much ratified by
the first marriage and therefore in
nature avoid the second act. Affid
davit, that proved that the infant
attained full age, married according to a
and his marriage a stranger and
contracted the child either by subsequent
to the infant, either in writing or by
words by the infant in his mother's house
in his mother's house where
the marriage is the stranger has no
right only under the guardian and
father and the father's title is the above
case. The rule is the same as to other
marriages, in prejudice of the
father. So with by Justice Parker that
the Rule from infant binds the
marriage

Co. Litt.
2 vol. 380 a.

3 Burr. 1794.
§ 8
Ch. Ca. 79.
3 Bac. 136.
2 Fitzh. 151

2 Bac. 3

2 Fitzh. 5
3 Bac. 136

Part 3d. consequences of the act that hereby have in view infancy. It is necessary to remember of creating when some occasions on Equity the subject of family contracts. By this fact concern the division of the estate as upon the marriage settlement agreement made by friends with the consent of Parents or Guardians and for the mutual benefit in Equity. And for the reason because they are according to the primary principles contained which is marriage. (Ans) this regulation is necessary and necessary to other people upon the income both or upon. This is not allowed at Law. Law and Chancery many little lessons in the Ancients. Teach the product of the Ancestor gap to the the Children generally. But in Equity and the Stress daily the other to become necessary for the benefit of one [illegible] that the marriage Set

Agreement should be made in order to be posted to the Younger Children
and it is that they are bound in Each
parte. The reason why Chancery can
make this Marriage Settlement an
agreement binding is because the Court
is the Guardian of all Infants in the
Kingdom. This is a branch of the King
as Parens Patriae, delegated to the Chan
cellor; and consequently Courts of
Law cannot retain their power in
this respect. The King is the para
mount Guardian of all Infants, and by
virtue of his these Contracts are enforced
in Chancery. How far such Contracts
made by Infants are to be enforced in
Chancery is doubtful. There is one gene
ral Rule, as the Subject thoroughly is
part to be, that the Courts of Chance
ry will enforce these Contracts. Their
power is discretionary. L. Hardwicke
has held that the Interest of

Parr. B. Ch.
Settl. 55.
1 Br. Ch. 152.

Settl. 113
1 Ves. Jun. 581
1 B. M. 594
Powell on
Contracts 44.

2 Ch. Cas. Cas. 87. a female Infant in a Marriage portion shall be bound by a Marriage Settlement or Agreement made before Marriage. It is settled that a female Infant may renounce her Right of Dower by accepting under deed and agreement a Settlement by way of Jointure: of Jointure in a Substitute for Dower and it has been held that she is bound by it, altho' it consists of personal Estate, which is contrary to the Cond. Law principle of Jointure, for by that it must consist of real Estate. It is said by Hardwicke that it is not settled whether a Male Infant can bind his Real Estate by such a Marriage Settlement Agreement. Mr. Fonblanque says the Reason differences in Male and Female Infants as respects their power of Renouncing has never been settled, that a Male Infant loses for Lucy if made with the consent of Parents

2 Eq. Cas. Ab. 101 1 Geo. 55 1 Ch. Ca. 55

1 Vent. 58. 90 2 Ch. Ca. 211 1 Ch. Ca. 52. 2 A. Ch. 239

Parent or Guardian which is a free hold having been settled by very long using: So Gentlemen is incorporeal a case this is a Real Estate. And it has been decided by Lord Mansfield that if a female Infant seised in fee covenants on Marriage with the consent of her Guardian in consideration of a Settlement to convey the Estate to her Husband: Chancery will compel a performance of the Contract So in Mr. Fearon's Chancery may a female Infant. Lord Hardwicke speaking of this case says it is going a great way yet he says there are cases where Chancery will on its Equity where the Settlement made by the Husband upon the Wife is an adequate consideration and the Lessey found. Again it is said by Lord Thurlow that the real Estate of a female Infant is not bound by a Contract to convey it to

2 Ch. Ca. 211
Cas. 52
Str. 604.

2 Ch. Ca. 249
1 Ver. 48.

Fearn. 3
615
1 Ver. 50

to

to her husband and after the death of her husband obtains possession of her settlement. It is a day the Court ought most to go with the agency behalf the marriage settlement is an adequate consideration for her real estate. This reason is directly applied to the claim of a bona fide purchaser before either the whole or the [illegible] part sold partly whether it would bind her unless afterwards ratified: It is agreed that such a contract made by a married infant to compel her will not bind her inheritance unless the agreement is made before marriage. But afterwards consent is always supposed. But though the general question whether a female infant may bind her real estate by such a marriage settlement agreement is not settled yet it is settled that if she be married with a female adult to con-

Cro. Car. 377
Cro. Jac. 56.
1 Roll. 73.

and Estate to effect in contemplation of a marriage he is bound by the Jury in only receiving his right to the Country. According to the current of authority it seems settled that no marriage Settlement or agreement made by an infant male or female, to settle their Estate will ever be enforced by Chancery unless it is fair and reasonable and when adequate consideration. Upon the investigation which Mr. Jewell says he has done able to give the Subject he says having no settled price refer said review which governs these cases. Another rule peculiar to the Law of Equity is if an Infant capable of making a will of Personal Property may bequeath his Personal property for the payment of his debts his Executor will be compelled in Equity to pay them. Bond Debts and such a in Law he is not bound to pay. This is a

Sule

Gilm. 69
Sug. 87 95
1 Scott 94

1 Scott 69
2 Off. 224
2 Ch. Ca. 115-
116. 152
3 Scott 715
Ch. Ca. 94
" 50
1 Eq. Ca. Ab.
" 284

1 Ser. Ca. 57
Mond. 403
1 Scott. 94

rule founded on the strictest principle: For, said an Infant may maintain an Action of personal property: He may sue for an account & Bequest: Now in pursuance of this Power cannot he order his Executor to pay this Bequest a Creditor? Clearly he can: Why then can not he order his Executor to pay his Debt out of his personal property? There is no reason to the contrary and it is nothing but a Legacy relative to a Creditor and not a ratification of a Contract: It has already been observed that an Infant Contract may be ratified at Law after full age: and in Chancery a Contract made by an Infant may be ratified by him after he attains full age, and this ratification may be either express or implied: Express by his own express undertaking to perform the Contract: Implied by such acts as show an intention

Mont 189

Mont 189

Lawyer the majority. By whom
land was bound to remain and
by Children and they leave it for fa-
ty and young: Mem: the Children were
not bound by it, after minority one
young indeed they continued for a
con[illegible] time to take rent after
full age and Chancery restrained the
Lease against them on the ground 1 Atk. 489.
that they waived their priviledge
Where a Court of Law in a cause and
action, conferred by one person on a-
nother in relation to some right or in
trust of hers by whom the power is given
As an Attorney, which power is given
him by his Client: Also with regard
to Infants it is a general Rule, that they can
not execute a general power vested in
them: By "general" is meant to dis-
tinguish powers, and the meaning be-
cause they have an discretion: But a

Lecture

Ibid. 299.
" 300
3 Atk. 675
" 676
Cowper 16

matter

1 Co. 372. 3 Co. 71 a. 14 Ven. Powers 488.

a mere or special power that is where the manner of doing is pointed out in the power, must be executed by an infant because no discretion is necessary or they interest in any manner affected, nor is there any danger of injuring any other person. It acts as a mere instrument: as a power to sign a particular instrument in a particular manner. But

Ferr. Ch. 13 Ver. 300

an Infant can not execute a power over his own inheritance it is said because they may affect his interest; thus suppose Father & Son, devises an estate to an Infant for life, and gives him power to make and Estate for three lives: Now

bear in this supra.

this power he can not execute because he might destroy his own Inheritance. Lord Hardwicke says that Sir Cl. Cardwicke gave up his opinion that there is no precedent in Law or in Equity that a power of sale of real Estate may be executed by an Infant. By this nothing

more

more is meant than that there is no instance of a General authority = And it seems that an Infant may execute a General power over personal Estate, even though it is so, that his own interest should be affected by it: provided he is old enough to bequeath it by Will. The reason is, if he is old enough & he is arrived at such an age, as that he is supposed in Law to have the charge of his Personal Property". The result of these rules and functions, is first that an Infant not interested in the execution of a power may execute it so as to bind the principle to the extent of it, provided the power amount to a discretionary authority over Real Estate: Secondly though he is interested he may execute a General or discretionary power over personal Estate, provided he is of sufficient age to bequeath personal

Ves. 304 Pow. 26. 43. 47. 48.

Mer. 363 Pow. 26. 54

Mer. 363 364. 366 Stra. 364 a. P. Wms. 209 Fonb. 6. 52 Pow. 26. 43 Powell 43

Pow. 54

property by lives: there are certain offices which an Infant may hold; and certain distinctions concerning them which will now be noticed:

What offices Infants may hold.

Cr. Cas. 636. 637. 1 Ins. 3. b. Cont. Dig. Title Office 3. b. 3 Bac. 705. 706

Of a general rule, that Infants may hold Ministerial Offices, requiring Skill and Diligence in the execution of by Deputy: but an Infant can have no Office, which requires the exercise of Discretion: Such as a Judicial one: He may be a Bailiff, Steward or Jailor, but he can never be a Judge of a Court of record or not. The reason why he may hold the latter is because the law not trusts it blindly by Deputy: These Offices are entrusted to Infants. The Law do not here [illegible] to be [illegible] the Court and Judicial Power [illegible] Deputy [illegible] Office

is given to it and its being p. 295
and lawyers perhaps prejudiced by
one & imagined the effect the same
can not prevent it and yet I think it
may: but the only difficulty is how it
ought to be obtained. The cer-
tainty perhaps attendant upon the fact
that it must then be repeated by
the recollection of Chancery. The true
criterion then as it respects the effect
on which an Infant may and may
not take it: if the effect and be
prevented by Defendant he could hold it
it can not be invented but the
consequence is it is the right an inci-
dental event: the Infant can not
be an actor for want of Account.
The Law will not for its sake violate
the oath: nor can such a court in a
court of a sister for the reason: be-
cause he has no discretion to take the
oath and the Account forever and
will

2 Atk. 123
3 Atk. 104
1 Ch. Ca. 299
1 Ch. Ca. 299

Ib. Atk.

Jones v. Lockyer

May
1st

Parish and Tithe

3 Geo IV c. 72
Sect. 3 & 5

An Infant may be appointed a Churchwarden or Overseer, and on attaining twenty-one years of age, the Acting incumbent on that Office shall be then of twenty years of age, elected: Any Person may execute it upon notice by the Other appointed Person, as the case may be, and he is and shall be entitled to receive and account for monies collected, and act for and in behalf of the Infant Parishioner: So far as an Infant may hold and execute the Office, and be held and execute it by proxy, is perhaps on his attaining twenty and Infant acting as and Officer is bound by his official Acts: and it would be improper if it not so, for the act under the authority of Law, and the authority of the and if he may an injury the Law will, must, and must hold responsible for it: If an Infant having in fact entered on Office and Duty he is liable.

How far an heir apparent is the
unfortunate of a condition annex-
ed to his office. These Conditions
are of two kinds, Either the Ob-
ligation is personal that Infancy are
bound to Either Conditions as marriage
Contracts: they Covenants not a cause
correct, &c. Therefore if an Infant
has an Estate to him he are upon
Condition or annexed conformable gra-
tition upon the event of a certain
thing, he forfeits the Estate when the
nonperformance of the Condition as
recorded as if he were not a minor. The
Reason is inherent founded on the inner
that he cannot give and Estate to another
in a right to order that Estate to revert
to him unless the Conditions are per-
formed. The Estate goes out of his
hands upon the Condition that such
things shall or be not done: but thirdly
and exception in the case of an Infant

Where

shall be considered as to be performed and on failure a forfeiture of the land by the tenant by the curtesy, or the tenant in dower, or the heir of the tenant in fee tail, or the heir of the tenant in fee simple, or the tenant for life or years, or the heir of the tenant in tail, nothing might be wanted on the part of the grantor to avoid the estate and consequently his intention given thereby Law would be restored in all such cases if it be assigned.

Implied Conditions

Implied Conditions may be created by Common Law or by Statute according to Lord Coke. Implied Conditions at Common Law are either grounded on Skill and confidence or Reason and Foundation or they are based on a presumption of Skill or Ability or upon some confidence from different Grounds. Implied Conditions at Common Law founded on Skill and Ability in the Grantee to be known, Infancy are based as well upon

Co. Lit. 223 b. Hardr. 11.

Charity

On an implied condition annexed to an Office, that the holder shall conduct dutifully and faithfully that is implied by Common Law. If the man for instance being a Steward, conducts himself unfaithfully or undutifully he forfeits his Office by virtue of the condition which is implied by Common Law. But by such condition implied by Common Law, or a man's forfeiture upon any unofficial crime or disorder, proceeding out of any offence committed in the life it has not been thought reasonable of Common Law that if he lost for life, all his Estate in fee, he forfeits his life Estate. This is a branch of the Common Law, which is arbitrary and the reason very not now exist but I am inclined to think such a Rule would still in fee, he would forfeit his life Estate, though on a civil suit. Such implied Conditions by Statute Law.

Co. Lit. 233 b
" 682 a
8 Co. 44 b
6 Co. 306

Co. Lit. 251 a
Litt. 251 b
Litt. 233.

distinction is taken which Mr. Cruise says he can not understand: the rule is this: where the Statute imposing the condition gives a recovery against the tenant for the breach of condition, the infant may avoid the condition by entry, but where the Statute gives no recovery against the tenant, but leaves the Statute Law, giving only an action for the non-performance of the condition and not a recovery the Infant is not bound by the condition: as if an Infant alienee in Mortmain be bound and forfeit his Estate this an actual waste. Mr. Cruise says he can see no reason for this distinction. Certainly it is this, where the Statute is imperfectly and only gives a remedy against the tenant

Co. Litt. 2 b. 59 a. 54 a. 5 B. & C. 474. 8 D. & R. 451

3 C. Litt. 2 b. 1 Mod. 232. 1 Vent. 82. 89

for the breach of condition and not a recovery against the Infant is not bound by the condition: as if an Infant alienee in Mortmain be bound and forfeit his Estate this an actual waste. Mr. Cruise says he can see no reason for this distinction. Certainly it is this, where the Statute is imperfectly and only

forfeit

privilege: but where it only gives a right of entry it does not take away the privilege: and it is a general rule of law that the privilege of an infant shall not be taken away by mere implication. It is a general rule that Infants are bound by the Statutes of Limitations made for a private benefit as well as the law of Limitations made for a public benefit in both cases the infant is bound by express words if any express condition are made by Statute which takes away his privilege unless complied with. For this reason the Statutes generally contain a clause in favorem filiorum, for keeping alive the rights and the Statutes of Limitations that have been passed. But it is to be that if any Executor or Person entitled in trust for an Infant or persons who neglect the Infant should or forbear to sue within the time prescribed

1 Mr. 235.
1 Fonb. 82

Statutes

Plowd 3
Co. Litt 97
3 Bac. 3
1 Co. Barn 3
1 Ch. 384

of the State and Territory having power to grant the legal is barred by the statute the 21st section excepting to the ordinary rules of descending and by is the rule both in England in Eng. Thus in the United States in a nation in the rule of law must be broad & wider as time goes from the rule of it: now a note is given to a in trust for an infant: under the two for things the notice within seventeen years a person of it is forever and the rule relating to recovery and administrating and trustees who have a right to sue is but need name and good to those cases where the notice is to be brought by the infant in his own name: the death of a person is given to [illegible] the action to recover this must be brought in his own name and the State is [illegible] any person

How infants are to sue and be sued

The rights which infants acquire and the duties which they incur by their contracts have already been treated of [illegible] the [illegible] of [illegible] particular rights and enforcing their duties. 1. The rights which the parent acquires by the guardian or foreclosure [illegible] by letter [illegible] 2. [illegible] and [illegible] by letter [illegible] liability; accordingly decided [illegible] action [illegible] against [illegible] Dept. Grant. But the Statutes 1 and 2 Matthew Stat. [illegible] infants to appear by next friend in certain cases [illegible] by [illegible] [illegible] against [illegible]

[illegible] 1 Ch. Ca. 98. 1 Atk. 225 1 Ch. 250

Wheatley v. Lane 1 Sw. 95 Earle v. Bishop 3 Ad. & E. 96 6 N. & M. 361

[illegible] 2 Ch. 250 Atk. 225

[illegible]

Com. 295 Stag 369. appear for him through the Judge of Prob. of the Guardian for the said Infant was refused.

6 Mass. 155. 2 Bro. 686 3 Ves. 149 1 Fac 64. Dom. 295 Ayl. 10 Ch. Ca. 165 2 Bro. 112 Ch. Ca. 86 Stat. 22. 3 Bro. 300 2 Ch. 2 Ch. 3 Bro. 38 2 Lev. 213 2 Bro. 180 Eq. Ca. Ab. 2 Ch. Ca. 306 1 Atk. 4 Ch. 1 Atk. 133 Ch. 2. 85

3. Where the Infant has no Guardian by Will or out of the Jurisdiction and no other ways provided and by Statute according to some opinions he may sue by Guardian appointed by Prochein ami but having regard to the Infant's consent and authority of the Guardian and the Infant and the Infant being not able to bring an action of the Infant cannot claim the Guardian bring an action against the Infant and the Infant obtained by the Attorney General the Infant's Land given by Guardian the Infant a little or little and not allowed to give power to the Infant. So when the Child is by his next friend Petition in the attachment Pen. and according to some opinions the Infant is entitled for the costs and the Pe-

may proceed against either at his
election. The rule laid down in P.
Williams is stated to be law in a full
Parent and where it is said that
there is no case where the Infant is ever
liable in Coll either in Law or Equity:
This latter seems to be the better opinion
An Infant may not oblige to give an
Bond at Com. Law and may
bring a bill as his next friend: it is said
a Stranger cannot be given it will
not bind the Infant before the court
unless the Defendant Defendant or other
person be the Guardian or Next
friend to the Infant Defendant liable for costs
if so he is liable in the first instance: In
England both Guardian and Infant
Parent be required to appear by the Court
upon the ground of saving that the Infant
may not be injured. Any one may
make a Bill as next friend but he
must avoid costs without leave of court
for he has to act by an attorney

Parent and

Ch. Pl. 298.

Dig. f. 298.
Co. Ed. 97
1 Ch. Ca. 109
Co. Ab. 155
8 Co. 81
2 Eq. Ca. Ab. 38
1 Wms. 530
Co. Litt. 127

Parent and Child

Stry. 1270
Bacon 80
Bull. 99.
Ep. 24. 154

Dig. f. 30 &
2 Ch. Ca. 232.
Bacon 205
Co. 59
Carth. 351
3 Ch. 100 Ep.
4 Bac. 96

1 Ch. Ca. 150
2 Bac. 640.
2 Bac. 41

[illegible] commencement the Suit but it may be
[illegible] discharged on motion by the Defend^t.
3 [illegible] If an Infant sue as Adm^r and Execu-
tor, the [illegible] brought by them
both jointly without [illegible] for the
Suit is in auter droit.
may take an attorney for both. De-
[illegible] and plead. [illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

a gift it may be assumed upon the
infant only the same benefit has
interest in it instead.

Infant Parties to the Parent.

Whether may the law regard infants
in relation to parents?

Infants in relation to their parents are in
very early considered as wives: they
are deemed incapable to make a
gift to which they only have consented.

Gift of Infant.

The taking from children children is
a thing under little a great offence.

Gift of Parent.

But if the child the infant
arrived to maturity and is living the
law is very clear also and the
act of the parent (unless a great and
a very after the injunction of Parent.
is it may be the parent. Infants in
relation to parent may behind the law
take the estate which Parent: they
are the first after Bear. They may
also take the wife as the law made it
they may also take a signal and take
a gift

they may take it on the Statute of distribution: So a man and woman have issue two children and both dye before the death of the father leaving children: So a man and woman have issue of such children and dye leaving children: Under the Statute 10. Charles, if infants may have Protection against Creditors, etc. Such are all within the Letter but Dead in law: So if a feme be a Feme Sole but married at the time of her death, it seems they are Executors: So if a man devise a legacy to the children of A. and B. and C. and D. and have issue only two children, they take jointly: Of the Relation, rights and duties of Parents and Children:

The ancients never thought it necessary to consider the different degrees

1 Fr. Ch. 38.
Pro. & Pal. 243.
2 Ca. Ab. 117.
2 P. Wms. 446.
Pr. Ch. 50.
2 Ver. 342.
2 Ch. Ca. 59.
2 Ver. 205.
2 Ver. 117.
2 Ch. Ca. 103.
Ch. Ray. 87.
2 Vern. 711.
Cro. Eliz. 150.
150. 160.
3 Bac. 125.
Hob. 235.
3 Co. Rep. 209.
3 Bac. 125.
Ejectment.

between legitimate and illegitimate children for their rights and duties are different; we therefore have two orders of children, those that are legitimate and those that are bastards. A legitimate child is defined to be one born during lawful bedlock, or within a competent time afterwards. On the other hand a child born out of wedlock is illegitimate; but it is not true conversely that a child born out of wedlock is illegitimate. Thus a foreign bastard is a legitimate child. An illegitimate child is defined to be one born out of lawful bedlock; in other words not begotten and born during lawful bedlock. The definition also adds words covering the case of a void marriage, inasmuch that after annulling the parents intermarriage and the father dies before the suit is out the child legitimate. He is not according to the

the definition of an illegitimate child
viz. one begotten out of Lawful Wedlock
and not born during Lawful Wed-
lock or within a reasonable time after
marriage: the true definition of a legi-
timate child appears only to be that
of one born during Lawful Wedlock Co Litt 244
the presumption is that it is legitimate
and unless case the presumption is
very strong. The ancients are other
proof of the children born or received as
their own have not been received Co Litt 244.
Co Litt 123
Co Litt 126
1 Bla R 157
Salk 123
Esp 185
Against their fathers and this must
ever be proved but in two ways:
1. By allowing the marriage of Parents
by the Husband & Wife, and 2. By
proving his impotency: but neither
point is conclusive: The courts are
other proof of the Husband's being
two in Wedlock that of his absence &c
the presumption from the time of
cohabitation & birth, & of the contrary

Co Litt 244
Bla Com 258
Co Litt 123
Salk 122
1 Bla 157
Salk 122
483 123
Esp 185
2 Ray 1095

the

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] when the proceedings were
[illegible] of the [illegible] and they were
[illegible] not [illegible] through the [illegible]
[illegible] have been [illegible] the [illegible]
[illegible] may also be proved by other evi-
dence than [illegible] of age. [illegible] the [illegible]
[illegible] state of health [illegible] [illegible]
[illegible] to admit [illegible] other proof of the
[illegible] [illegible] [illegible] to ap-
[illegible] and in [illegible] It has lately been
[illegible] that other evidence than that
[illegible] and [illegible] is admis-
sible to prove illegitimacy, and that
the marriage celebrated with John Stile
[illegible] the child was reputed a bastard
called by the name of John Stile, and that
the mother took the name of John Stile,
[illegible] to have [illegible] adopted
[illegible] such proof of [illegible]
[illegible] the effect of a [illegible]
which is [illegible] and [illegible] at [illegible] it
[illegible] [illegible] in the case of [illegible]

[illegible]

1 Roll. 360. 1 Bulst. 41. tissues for errors existing before the marriage which would render such a marriage unlawful. But the validity of a marriage may be affected by

1 Ch. 144 matters arising after the death of the parties. The issue may be bastardized after the death of either of the parents and

1 Ch. 356. 1 Salk. 123. 2 Ch. 3. 1 Ch. 12. 1 Roll. 360. 1 Ch. 191. 2 Str. 900 owning bastardy: & child begotten and born after a divorced a mensa et thoro is presumed to be illegitimate. Because the act of a court of justice determines the presumption in law towards marriage & legitimacy. When the question of legitimacy is to be determined on that of marriage the parents are admitted to prove marriage.

Comp. 90 Salk. 123 Str. 1104 This is shewn by others. But she is not allowed to prove her own marriage because the validity of the marriage is questioned in Bastardy proceedings. The law is so, and it is not to prove the time of the

children, which were born to the Shunamite
be also as to the fact of prophecies so
accordingly of the father or mother as
to the children being born before their
parentage, may be proved after their
death. He is not bestowing and
here having established so an answer
to blessing, good or evil, upon
other people. So Hezekiah commanded
to isolate, cutting and burning Bible
inscriptions in the Shunamite as
evidence for children both and death.
The Hebrew word of a leper is kept
the two Shunamites death that kept the and
lands means of pestilence kept and death
[illegible] and leprosy. Kept and death
[illegible] [illegible]
[illegible] with a [illegible] time after
[illegible]; that the [illegible] time
[illegible] [illegible] [illegible] the law
and [illegible] accordance in either
[illegible] time after the Shunamite's death or
[illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible] According to some nine calendar months and ten days are the usual time of gestation: that is 280 days: according to others forty weeks which is 280 days. Nine calendar months seems to be the usual time and is probably most correct. This is a question to be decided by the faculty and not by a rule of law. [illegible] the usual time may doubtless be prolonged or shortened by in some cases. The rule is that a child born within the usual time of gestation, calculating from the husband's death, is legitimately presumed legitimate. On the contrary a child born after that period is presumed to be illegitimate. But one born nine months and fourteen days after has been considered legitimate: the mother having suffered [illegible] and so has one [illegible] [illegible] months and twenty days after.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

If a woman marry immediately after her husband's death & be big with a child, which according to the usual course of gestation might be the child of either party, it may when it arrives at the age of discretion choose either of them for a father. It is said one may not be born longer after his death, it seems to have been a custom: personal defect die with the person. But this holds only between a child born before the wife's marriage & the husband, and the lawful time of the marriage. If then the testator enter on his fathers estate and die, and his wife shall have to the exclusion of the brother. Yet to explain the manner there cannot have been a mutual [illegible] [illegible] the testator and account to his [illegible] Bearing his life the [illegible] may [illegible] hand. So if his [illegible] [illegible] at his death.

Of the rights and [illegible] of [illegible]

Hale 3.5.
Wms. 4.5.6.
Co. Litt. 8.
1 Bac. 3.17.

1 Bac. 315.
Co. 44
. 58
Co. Litt. 33.
2.45.

Sir. 180.
Bac. 315.
Salk. 120.
Lev. 110

1 Bac. 315
Co. 44
Co. Litt. 33
. 2.45

Co. Litt. 244
1 Salk. 124
1 Bac. 316.

Co. Litt.

Parent and Child.

Nature and Rights, and Incapacities of Bastards. The rights of a bastard are only such as he can acquire, for he can inherit nothing, being called "Nullius filius" or [illegible] Yet even he is [illegible] of

1 Bl. C. 458. kin to anyone, but his own issue. But the maxim, that he is filius nullius

1 Bl. C. 458. [illegible] 108 [illegible] 66. does not hold in all respects. For example, it does not hold as to Marriages within the prohibited degrees. Nor to cases in which the law requires the con-

[illegible] sent of father or mother to a child's marriage. Indeed it seems rightly only

[illegible] to the law of inheritance that according to Blackstone a bastard is quasi filius nullius because he cannot inherit.

[illegible] He may acquire a surname by reputation though he has none by inheritance. And he may purchase by the name thus acquired. So he may by the name

[illegible] and description of John Stiles son of J. S. i.e. the reputed son of John Stiles [illegible]. By the description of [illegible] he can

[illegible]

Appeal is generally used as a synonym
[illegible] with Blood of the Top [illegible] Cr. R. 5.
[illegible] Blood in any Second Blood [illegible]
[illegible] Cr. M. 51
[illegible] the Relationship of the Top [illegible] Blood of the Cr. D. 3 [illegible]
[illegible] Cr. Ete. 15
[illegible] Top [illegible]
[illegible]
[illegible] Cr. Ete. 51
[illegible] Cr. Ete. 65
[illegible] Cr. Ete. 210.
[illegible]
[illegible] the Relationship of the
[illegible] Cr. Ete. 3
[illegible] Cr. Ete. 34.
[illegible] Cr. Ete. 55.
[illegible]
[illegible]
[illegible]

objection it is doubtful in the case and the decision upon it is not clear
[illegible] is contingent on
[illegible] leave is not contingent on
the person [illegible] but is not the
[illegible] the [illegible] the
[illegible] the [illegible] leave
it is [illegible] the better opinion seems
to be against the decision. The [illegible]
[illegible] upon the ground that
[illegible] all their kinsfolk must be
[illegible] a [illegible] and he
[illegible] the Diplomas a [illegible] at
[illegible] is [illegible] in the place where
[illegible] is [illegible]. If the children are [illegible]
[illegible] with the [illegible] or [illegible]
[illegible] [illegible] [illegible]. There
is no [illegible] [illegible] [illegible] and
[illegible] [illegible] the [illegible] in which
the child is [illegible]. If the [illegible]
[illegible] by [illegible] the [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

[illegible]

delivered: then the child's settlement is in the Parish from which the mother was sent &c. — Of the duty of Parents to their Bastard children: The duty of Parents to such children consists chiefly in their obligation to maintain them: And as to the means of enforcing this duty in England vide. 1 Bl. C. 457. Though the relation of Parent and Child is not recognized as to produce pure civil rights yet as to certain natural duties it is — The Law in England on this subject depends on the Statutes 18. Elizabeth 7 James 1. 3 Charles 1 and 13 Charles 2d and 6 George 3d

Parents Duty to Bastard Children

1 Bl. C. 457.8
Rev. 317

1 Bl. C. 458

Of the rights and duties of Parents in relation to their Legitimate Children and vice versa: —

1. The duties of Parents to such children consist principally in three particulars, viz. their maintenance, Protection and Education.

1 Bl. C. 446

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

by labour or otherwise to maintain their
Bastard Children, are now necessarily to
maintain their Children in England St. 9 Geo.
children are entitled to necessary Aliment 2 Burn's J.
Bastard Children, and to have Children the
Obligation on Parents, mutually in England
is only necessary. Relations are liable
in the first instance. Grandfather and
and Mother of the pauper have power to
apprentice. No grandchildren are
and liable if children are able. In Dis-
cipline a person is not obliged to maintain 2 Bl. Ch.
his wife's children by a former Husband 3 Ch. Ca. 3 Ch. Rep. 18.
upon marriage. No question arises 2 Bro. 345
is made as to the liability at the
time of marriage. The statute 43 Eliz.
Liability extends only to Natural Relations. St. 9 Geo. 1 c. 7
But is not the true principle that
the Husband is bound if a relation of
the wife, yet he takes her "cum onere"
other for what of so in the
the have entirely the Liferent. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Parent and Child.

[illegible]

[illegible]

Rights of the Child and Duties of Parents.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

If a person who has married in an
irregular connection and undertakes to
marry to divorce his wife, has power of
marriage, it is regulated by the law
of the country where the parties
have their domicil. The consent of a parent to the
marriage of his child is also required
by the English law and marriages with
out such consent of a marriage is void
in England. But if the marriage
is good by the law of the country
then it is valid to a place.

Dwight
p. 55.

1 Hag. 55.

1 Hag. 452
Burn v.
Fenwick.

3. The parent has no power of his child's
estate otherwise than as a trus-
tee or guardian and is liable as the case
may be in an action where the child
attains to [illegible] the

age

Parent and Child

[illegible]

[illegible]

[illegible]

action: In contrariety to the original — Stk. 3.4. Wils. Rep. 2. 3. 3

end [illegible] the material cause of ac-
tion and without it no action would
lie: the inference required by the Parent — 3 Wils. 6 Esp. 2.3
during her illness may be presumed
& Precedents and Dicta are that this ac-
tion Defendant are entitled [illegible] his own — 5 Esp. 108
the Daughter is [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] was it stated that the Claim
[illegible] was obliged to Defendant [illegible]: She was — Peake 55
twenty years of age: But the Allega-
tion is not the real or principal cause
of action: the real cause of action is — 3 Wils. 18 Esp. 105
the Disgrace and injury occasioned to
the Family. [illegible] The least loss of Service
is sufficient: It is not necessary that the — 1 Wils. 1 1 Esp. 50
damage be in any degree proportioned
to the loss of Service. [illegible] thought the
[illegible] in a pecuniary way [illegible] — Peak. 55
to the Parent and [illegible] profit. [illegible]
Woman's Daughter: the character of
the Daughter [illegible] [illegible]

[illegible]

[illegible] the Guardians of Bromsgrove
over her in trust with other persons
for an mitigation of damages.
4. Actions of this kind have fallen into
contradiction of a service where there
was no relation in the nature of a con-
[illegible] prostitute: or where the father has
[illegible] the daughter keeping a house
for prostitution & with the daughter (Pat-
[illegible] it has been holden in the court of
[illegible] Exchequer on the ground that the
[illegible] relation may not be merely the Daughter
[illegible] the house may prove to have been a
[illegible] & the parent it may lately
been holden that it may be proved
that she actually served her parent. The
[illegible] of the law on the point: the
[illegible] of people received in evidence
[illegible] the age of the Daughter: however
[illegible] of the action is
[illegible] to the parent the account from
[illegible] under age the [illegible]

[illegible] [illegible] [illegible]

A person may [illegible] [illegible] another with [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. This is [illegible] by [illegible] in the [illegible] of his [illegible] that the Daughter (Servant) be in her father's house at the time of the injury [illegible] [illegible] of to be all [illegible]. [illegible] [illegible] an infant in a boarding school or [illegible] another [illegible] for the benefit of her parents. If an adult [illegible] [illegible] [illegible] to [illegible] because she although [illegible] not be employed? The action lies [illegible] [illegible] [illegible] parents [illegible] as [illegible] master. In all these actions the Daughter herself is a good witness because she is not interested in the event. The action lies for debauching & [illegible] is substantially an action on the case.

But where the Defendant has illegally entered the Plaintiff's house the Plaintiff may [illegible] for breaking and entering his [illegible] and lay the debauching as [illegible]

[illegible]

[illegible]

2 Bur. 878.

[illegible]
Peake 55.

3 Wil. 18.
Bl. [illegible]
[illegible]
3 [illegible] 566
[illegible] 788
[illegible]
[illegible]
[illegible]
[illegible] 1342

2 [illegible] 528
[illegible] 1332
1 H. Bl. 558.
[illegible] 217
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

Tenants Rent Bills.

Tenants liable for the same, notwithstanding they shall be entitled for the term of his Tenancy to be liable on a Tenancy being renewed and continued as aforesaid. He is no otherwise liable on their Contracts than Landlord and as Agent of the Tenant, payable on the order of Landlord for expenses.

Tenants liable for the same.

Tenants liable for expenses.

312.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

330.

Master and Servant

A servant is an agent to the personal authority of another.

A master is one who exercises such authority. A servant is a person authorized to constitute this relation.

A person subject to civil authority is not a servant. This authority is generally created by a contract between the Master and the Servant and some other persons. There are six species of Servants known to the Law of Contract viz. 1. Slaves. 2. Apprentices. 3. Menial servants. 4. Day Laborers. 5. Agents, Factors, Brokers, Attorneys &c. 6. Public officers in service of a State or the Crown.

The first and last of these species are unknown to the Common Law. We will now treat of these several species of servants in their order.

Lecture

1 Bl. C. 423.
Generally 68 & Suits the.

Master and Servant

1st of Slavery: It is doubted whether our Laws have authorized Slavery in Connecticut. If it is legalized here or any where it must be either by the principles of Natural Law or by the Common Law. If it is authorized by Natural Law it must be either by "captivity in War" "contract" or "being born a Slave". In captivity it is said that the Captor has a right to kill his prisoner. This however is not true: he is bound by the Law of Nations which is the Law of [illegible] it is [illegible] belongs to [illegible] his prisoner. He may kill him in case of necessity but not otherwise.

2 Paley [illegible]
1 Bl. Com. 423
[illegible]

2d By Contract. A Contract [illegible] [illegible] the Convention of Direct Slavery which is an absolute power over life liberty and property: on the principles of Reason this Contract is void. For a man can not dispose of his life nor his liberty [illegible] though he has contracted

Castro v. Stewart

over it, yet having no Consideration; consequently, the Contract is void.

Hence to become a Slave by Contract is a wholly impossible. Unless a Contract to serve another is good.

3. As to the third, it being law, that if the Bondman gain the Land, must of course, the Commonwealth and want of Slavery of any kind.

4. Foreign Slaves on landing in England become ipso facto free in the enjoyment of personal liberty, property and personal Security.

5. Slavery in England was abolished by the Statute 12 Charles 2d.

It appears to Judge Tilghman that Slavery has been and is now legalized by our own local Laws. He says there are no Statutes in Connecticut authorizing Slavery but that and Statutes conveying on it restrictions: making certain things the duty of masters to Slaves:

1 Black. 195 n. 4

Salk. 666 Sect. 1.

Salk. 124. 666 Fill. Test Sect. 159. 194. 204 2 Bl. Com. c. 3. Hume v. Hist. of Eng. 387

Stat. Con. 1821. 228. 234. 396. 399

Slaves:

providing rules for the management of slaves; providing also that the master should maintain them unless they have a certificate showing they do not belong to him. The Supreme Court of Louisiana has decided that slaves could not be for the recovery of a slave but in the case of slaves in Louisiana and other

Saxton 686 Slave absolute slavery never did exist in any of the United States.

2 Mich. 306 2 A.B.R. 30 The privilege of a slave with the consent of his master is free to sue and answer criminally: So decided in Connecticut by the Supreme Court of the State.

It is a question whether an negro child born of a slave by birth of it should live and be raised?

Pickard v. Pearce 7

The usage in Connecticut has always been conformable to the law and that it follows the condition of the mother.

Parker Superior Court: Ct. to the

1 Ch. 6 Brothers

but not

or of the Child: the Child can not
then in the age of the Father.

Stat. Cut
Sec. 1. 188

The importation of Slaves has long
since been prohibited: and those in Ohio
actually born since 1784 and before
August 1793 are by a Statute made
free at 28 years of age, and those born
since 1793 are free at twenty years of age.
It is generally agreed that if any
be judicially condemned to Slavery for
Crimes consistent with the Common Law:
it is a Civil Penalty to the Public:

Stat. Ohio
5 Sec. 80

III. Apprentices.

Apprentices from the French word
(Apprendre) to learn. Generally
bind and bound for the purpose of learning
some Calling: Sometimes they are
bound to Mechanics and Farmers to others:
It is a rule of the Common Law that
Deeds of Apprentice must be bound by a
Deed: consequently a parol Contract
of Apprenticeship is not binding.

1 Bl. 426

There is no power for the Judge, Three
Commissioners, which personal liberty, a power
so high that it can be bartered away
a Bear. This is the only instance of a
Bear's being received to a Contract
creating a right, or to personal Contracts
The Servant lifes his personal liberty during
the time. It has lately been decided
in England that a Defective letter
a Contract of Apprenticeship, cannot
be construed into a Contract of hire
for year or month. Formerly it was
said that the relation of Master and
Servant could not be created unless the
Servant be actually retained by the space
of 1 Month. The reason was that
the other Servants may be retained
by fresh agreement. The Statute
Law of England provides that no person
shall be apprenticed not by the
Overseers of the Poor or with the consent
of two Justices. Masters until they are

the age of twenty one, and females under eighteen years of age. The Statute mean persons. The Second Law provides that the person to whom property is offered, are bound to receive bond. There is a similar provision in the Statutes of Conn.t except that no person is bound to take bond. Our Statute provides that children liable to come to want: the poor not only provided for: those who are idle or rude and disorderly may be bound out by Select men with the advice of the next Assistant: Jacob Ellis 2d. formerly Agent of the Town Select men and to officer over poor of the town. Statutes of Conn. 69. 93.

The Servants except Apprentices and of Common right entitled to Wages: where there is no Agreement the proper Action to institute is a quantum Meruit. Menial Servants in England agree on their Wages, but the

Wages

Salk. 27. 91. 1 Bl. 29. 426

1 Bl. Com. 425. 428. wages of servants in husbandry is agreed or settled by the sheriff or the justices of the peace. In Connecticut and most if not all of the United States, the wages of all servants are settled by the justices: and as in England except in the case of husbandry, the law will always imply an agreement for wages with other servants, but for apprentices never. Apprentices are regularly not entitled to wages, unless it is so stipulated that they shall have wages, but then they do not receive them as a common right. A Statute of Q. Eliza. 1 Bl. p. 427 hath enacted that persons using bind themselves as apprentices, the statute ordains, that be paid they are not bound by their covenants, and it is so decided. The only effect of this decision is that while they remain or pretend to be apprentices, the justices respectively apply the rights and duties

1 Bl. Com. 425. 2 Burr. 1127. 1 Bl. Com. 426. 1 Wils. 310. 1 Burr. 1128.

the penalties of Master and Servant: Dec. 1818
Once if the Servant serves his time required, he shall be free of his Master If a father binds his child by indenture, the father or Guardian is liable for a breach and not the child. The father or Guardian is bound for his faithful service. The indentures are generally signed by the Father or Guardian consequently they are liable. There are certain duties which result of course from the relation: The Master is bound to provide necessaries for to protect and stand in the place of a Parent to the Apprentice. Cruel ill usage or abuse is good cause for the Servant to leave the Master. Matt. 3. 8.
It is often laid down in the Books that an Apprentice can not be discharged except by Deed. This need some qualification. An Apprentice can if his Master wishes be discharged by

by Apprentice. The Rule seemingly is, If

2 Bay 17.
5 [illegible] 18.
6 [illegible] 18.

the Apprentice is discharged by agreement he cannot be discharged by Deed: although [illegible] in all other ways.
Concerning the Indentures amounts to a discharge by agreement of both

Dy. 382.

[illegible] the Indentures to be by [illegible] parties [illegible], whereas the Master discharges the Apprentice by fraud he cannot maintain an action against

[illegible]
[illegible]
7 Rep. 558.
2 H.Bl. 574
1 Day's Cas. 153

the father. The father cannot by have maintained an action against the Master for he was guilty of a wrong [illegible] was forced on the father then [illegible] with the [illegible] proved is [illegible] of the dissolution of the Indentures = If the Master turns away the Servant and afterwards he requests him to return and he [illegible] the [illegible] an action to recover him and [illegible] on the principle that the [illegible] not [illegible]

to a subsequent servant on inquiry
if the Master had not requested him to
return the [illegible] of the Servant that he
very [illegible] would have been good
recommendation concerning the above case is
analogous to the case of a Servant go
into Inns & Public Houses, or in other, a
hired Servant with a Gentleman going
to Inns and Hotels and Taverns, the Gentleman
and the Servant lodging at the Inns
and Hotels, and the Servant is no
Lodger. There is a Statute in Connecticut
enabling the Court of Common
Pleas to award damages against, for
fault of the Master, and by the Common
Statute, if the Adventurer is guilty of
misconduct, the Court may award
him in a recovery against.
In England the above Union is done by
the Court of Sessions & by the Justices of
the Peace the Apprentice and a legal
Justice

Decl. of Offices of Ct.

Statutes
[illegible]

Justice will be right to appeal to the Court of Sessions. The discharge may be in consequence of the default of the master or the servant. The servant may be discharged upon appeal and forfeiture of the bond having shown an reasonable cause.

3 Geo. 3 c. 48 s. 4 6

Section 2.

By a rule of the Borough Court, the Master can not assign his apprentice for, by a Contract founded on a special confidence in the Master the trust is fiduciary. One who binds himself to the man or is bound to him must be willing to be obedient to this man and yet not be willing to serve any other man to whom he may be assigned. By the Custom of London, Apprentices may be assigned. Hence if Arbitrators award that the Master assign his apprentice, they award is void, for the trust is fiduciary and is not transmissible and cannot therefore be assigned.

1 Ld Raym 250
Salk 68.
2 Lord 503
3 Burr. 1505.

1 Ld Raym 250

But though at Common Law, the Assignment of an Apprentice may not affect his interest, still the Assignment is good between the Assignor and Assignee so as to bind the Assignor. — The rule that an Apprentice is not Assignable is for the benefit of Apprentices, and the rule goes no further than the object of it requires. But if an such an Assignment the Apprentice voluntarily goes to the Assignee, he acquires the rights of an Apprentice and becomes an Apprentice de facto: he also gains a settlement if he serves his master, and Judge Wood perhaps becomes free of his trade. On the second principle the Master cannot assign: he is bound to keep the Apprentice under his own care. He has no right to send him abroad, or to employ him in his trade unless the Contract admits it or the nature of the case requires it.

Ex. v. Ely 685
Sack 68.
Wolf. 90.
Dunf. 64.

Hott. 3.
Gibb. 290
3 Ind. 130
12 Mod. 456

Master and Servant

Stg. 258. Stg. 12. Salk. 68. 1 Ver. 55.

It is settled that the Executor of a Master can not take an Apprentice after the Master's decease for on the same principle, that the land is not assignable, it is not transmissable — It was once held, that the Executor was liable and he hereby covenant to teach, and was bound to prove the contrary to be taught this seems to be against the general rule and is denied to be law.

Dier 99 Sid. 216 Dan. 24 Stg. 125 Cited 4 B. Wortmullers of Parliament 296.

Whether the Executor is bound to pay such duties necessary to the apprentice during the time agreed on, is a question the current of authority and that he is bound even though he has no benefit or consideration.

Stg. 258 Co. El. 53 1 Salk. 68 Stg. 12 Lyon 82

The ground of the decision is, an express clause or proof that the Covenants are independent, may be sued and the other to be sued accordingly — The Covenant must operate as independent unless it is otherwise stipulated.

There is no reason for this distinction whether the Executor is named or not. The Executor is bound of course by all the personal Covenants of the Testator. Judge Cranch differs in opinion from Judge Paine as to the Executors liability to provide mechanics for the Apprentice. The ground on which the Executor was bound to supply the Apprentice with mechanics was that in consideration thereof he had a right to the person & labour or earnings of the Apprentice. The Executor clearly has no right to his earnings or control over his person: there is therefore no Consideration for the Executors liability. Judge Cranch considers the bond to be an entire bond & not two as Mr. Paine perhaps. If the Executor is liable the bond is broken & if the Executor is not liable, the bond is good for nothing.

In England a peculiarly strong ac

Charter and Covenant

Stay 353 Stg. 1st Salk. 171. Ld. Ken. 30.

It is settled that the Covenantee of a charter can not take an Appointment after the charter recited for on the same principle, that the land is not appurtenant, it is not transmissible = It was once held that the Covenantee was liable on the charter covenant to lease, and was bound to fulfil the obligation to be bought. This seems to be against the general rule and is denied to be law.

Ante 194 Sed qr. Dom. 24 Stg. 108. Sed Ld. Hardwicke Bury & Bartram Ca. 1 Ves. 196.

Whether the Covenantee is bound to fulfil distinct necessaries to the appointee during the time agreed on, is a question the current of authorities and that he is bound even though he has no necessaries is considered.

3 Mod. 141 Cro. El. 535 1 Salk. 171 Ld. Ken. 30 Dyer 33.

The ground of the decision is as follows viz. that the Covenants are independent, one to serve and the other to furnish necessaries = These Covenants must operate as independent unless it is otherwise stipulated.

There is no reason for the distinction whether the Executor is named or not. The Executor is bound of course by all the personal Contracts of the Testator. Judge Cleaver differs in opinion from Lord Ellenborough as to the Executors liability to provide mourning for the Testatrix. The ground on which the Testator was bound to supply the Testatrix with mourning was that in consideration thereof he had a right to the person to have in carriage of the Testatrix. The Executor clearly has no right to his carriage or control over his person: there is therefore no consideration for the Executors liability. Judge Lawrence conceives the bond to be an unlawful bond, and thus as Mr. Ferrand pathetically - If the Executor is liable the trust is transmitted, if the Executor is not liable, the trust cannot be executed.

In England a testamentary appointment

Proceedings of Parliament.

Salt v. Ch. on taking the Assignment, and hence if the Bankrupt obtain the Discharge he ought to provide accordingly.

Hom. 150. Chancellor Hom interfered, and moved that a part of the premises should be restored. He moreover they ordered a lease over than the estimated one to be restored. If the Allocation is turned away by the Proceeding under or a part of the premises to be restored. Hom 64

Cath. 109 3 Ch. 500 Stge 582. Hal in the Proceeding be revived a Bankrupt which Difficulty be relation, a part of the premises will be restored or rather stolen. Yet the Bankrupt is not gone as a Discharge. Ch. Court of Sessions will Discharge in case of Bankruptcy if the Allocation receives it, and then the relation is Defeated. In England the Bankrupt, who have a right to Discharge may over the Proceeding to restore a part of the premises. Matters are Different.

tion.

Master and Servant

earns by his labour during the Apprenticeship belongs absolutely to his Master. And this is the rule where the apprenticeship is only in fact & not made by [illegible] Contract. [illegible] at any time the money earned by the Apprentice during the apprenticeship may be recovered by the Master in his own name in any proper action & this rule holds even though the Apprentice labours without his Master's consent and out of the time of his Master's service. This rule hath [illegible] only [illegible] to any other Servants except apprentices. Hence the Master cannot recover the Servant's wages. His proper remedy is an action on the case for loss of service. So it is said [illegible] parish Servants, if they quit their Master's [illegible] and earn wages, the Master cannot recover the wages yet he may [illegible] action against the Servant [illegible] [illegible] against the [illegible] of the

Services

Str. p. 588
Salk. 68
10 Mod. [illegible]
6 Mod. 69
1 [illegible]

[illegible]
Salk. 68

1 Ins. 117
Cro. Jac. 653
2 Lev. 63
3 Bac. 567

Master and Servant

Ch. 94. and begin from of the former petitioner against them for breach of Covenant of an apprentice or any Servant in

Ch. 56 Stat. at Lard. 639 to run away from his Master's Service or action lies against the Inferior and forewarning in a Servant within this Colony as to the form of the Notice in this case the two distinctions of taking by force, taking away & enticed or retained on the same side line

Ch. 55 sect. 2. 8 Geo. 1. 19 ch. 11. 17 Scott. 360. 5 Geo. 3. 57 Chap. 100. 9. Geo. 1. 27 8 Geo. 1. 19

In England an apprentice gains a settlement in the place where he served the last forty days of his apprenticeship by Statute

In Connecticut an Apprentice gains a settlement by reference with the Master but by

It is also provided in Connecticut that an Apprentice or other servant the age of fifteen years or more shall

serve

Masters and Servants

are to give truth the terms of their agreement
or the original terms is implied: and it
is also further provided that under a
general servant, a servant employed in
doing to retain hires or of which hay that
may be taken to prove him

XVII Indented Servants.

These are Convicts from
being extra provided

Sat Feb 1 Lecture
1 Bl C 425.

The rule as to these Servants in England
is if the period of the service is not fixed
the hiring is for one year: on the prin-
ciple that one shall serve and the other
maintain through the second year.
This is not the rule in Connecticut
that is it is not practised in the East
Indies the statute obligeth a Master
to give notice to the servant leave
his Master without three months ne-
glect under penalty of forfeiture

Sat Feb 3 Bro 346

XVIII Bonds Servants.

There is a rule of the Common
Law

although exclusively this Clause
Seventy Cost by Statutes Litigated
and the Bengal Regulations that all
persons having an equitable effect, may
be subjected to labour and the punishment
of the Sepoy and by this means accu-
sing persons in Bang Labourers
act and than the circulation of them is
liable to a penalty.

Sec. 5 Cl. 4 & 7

V. Servants of this Clause are agents of
Nations of Sepoy including Factors &c.
Cliff Clerks, Servants, Clerks &c.
The Difference between a factor and
a Broker is that the former is a for-
eign agent. These are not Servants
Apprentices and Hamals Servants
but only as affect the Factors & their
Employers. The Clerks have not the
power general control over the per-
son of the Servant. Their employers
usually called the Principals. By
the right and duties of this Clause

Sec. 1 Cl. 1 & 7
Act 1 of 1863
Sec. 2 Cl. 1
Act 10 of 1859
Sec. 2 Cl. 1
Act 10 of 1859
Sec. 2 Cl. 1

persons

servants and their employers, it is difficult to lay down any general rules. They are always bound to act for their Master according to his directions. The Agent ought strictly to pursue their business both for their own security and the safety due to their Master. Whenever an Agent pursues his instructions he is not liable for casual accidents if he does not pursue his instructions. A Factor may retain goods in his hands to satisfy a balance in his favour and not only a particular but a general balance. A particular balance is one due for Agency on particular Articles. An old balance on board a ship. A general balance is one due for Agency on all the goods that have come to the Factors hands in the course of his business during the continuance of the Agency. The business of a Factor is to buy and sell according to

Ward 469

Ward 469

is in selling for his commission and Sales:
Ante 250 His lien is gone by surrendering the goods
1 Bac. Ab. 95 to the Principal. A lien is an inherent
1 Roll. " " right to the owner or a specific in
2 Ld. Ray. 909 cumbrance. When a Factor sells goods
2 Str. 1154 he has the same lien upon the price
of the goods in the hands of the purchas
er as on the remaining goods and he
may direct the purchaser to pay the
money to him and not to the principals
and then if the purchaser notwithstand
Ante 251 ing such direction pays the money
to the principal, he is liable to pay it
to the Agent also. Whether a Factor
can sue on Credit when his General
Agency is generally for buying and selling
goods seems is a disputed point: he may
be between his principal and himself
or as between himself and the purcha
ser he undoubtedly can. If he does sell
Ante 252 on credit he must act with prudence
Ib. 1 Ch. 3 If he is imprudent and the person becomes
Ven. 30

Martin and Forward

or Bankrupt the Factor himself is liable. Courts of Equity will construing though not frequently interpose in pecuniarily concerns. If the principal supposing the Factor to be in failing circumstances, should order the Broker not to pay the money to him, but to remit it to the Principal, and the Broker nevertheless pay it to the Factor, he would be liable to pay it to the principal. But a Factor if in good credit may receive the goods of his Principal, and they come to his actual possession: Constructive possession is not sufficient to give or create a lien. A Constructive possession is a present right of possessing as contradistinguished from actual possession. So far as to the lien the goods are considered as a pledge and a pledge on the credit of the Debtor is of no value.

Where the authority given to a Factor is discretionary he must execute a warrant

that

[illegible] 3 Ch. 3 [illegible] 134 [illegible] Cowper 117

Master and Servant

that power can not be liable for unauthorized acts: But if he has no discretionary power, and then varies from the Principal, the principal may revoke the Bargain: He is liable as the Factor, if he buys for a price more than his principal warrants. If he buy more, the principal may disclaim the excess: if he sells for less, the principal may recover the difference, he may do through the factor, when the latter acts reasonably: A Factor has no right to pawn the goods of his principal: he out of the line of his business. If he does pawn the principal may redeem the goods of his pawnee, and if there is a balance due he may be hindered the balance due to the factor. maintain an action of trover for the goods. He may do even through the pawnee, provided that the factor acts in a representative capacity.

Hence no Accident is an excuse for keeping and selling goods.

Hence S.D. 1 Bos. 208.

Cf. Hoff. 3 Bos. 208. Bentford Sale 181 & 181 n. 39.

A Factor who sells, and may have an action against the vendee in his own name. He was a Factor is a foreign Agent and as a great deal of business is done by Agents, a remedy must be and has been found. A Factor usually acts in his own name and his principal not knowing nor being the law requires that he should be made known:

1 Bl. R. 382
Cowp. 256
1 Wils. 337
Salk. 130

The Auctioneer who is not a Factor may sue in his own name for goods sold by him even though the buyer knew that he acted as Agent. An Auctioneer is not liable for selling goods to the highest bidder the reason is that he acted of selling and given at Auction is an established Rule that the highest bidder shall have the goods. If however the principal be paid down to out of the proceeds of a fraudulent sale in the first instance and he then sues for it he is liable:

1 B. & P. 8
2 Doug. 745

The Attorney has a lien on the papers

and

The Costs and Fees of

1 Ch. Ca. 81
Ch. Ca. 251
1 65
2 Ch. Ca. 80
1 Ch. Ca. 81
Ch. Ca. 80
1 Ch. Ca. 102
6 Ch. Ca. 66
1 450
2 Ch. Ca. 110
5 Ch. 1

and expenses of his client to satisfy his fees and he may direct the adverse party to pay both the costs and disbursements and if he neglects that he may have to the client he may sue for his fees. Pay the fees in both and the Attorneys fees and the Barristers fees are not taxable. The right in the Attorney is subject to any equitable claim of the adverse party. It is subject to a claim of set off. Such Equitable claim is paramount to that of the Attorney.

1 Ch. Ca. 95
2 Ch. Ca. 100
6 Ch. Ca. 100
1 Ch. Ca. 101
Ch. Ca. 100 and Ch. Ca. 101
Ch. Ca. 95 and 95
1 Ch. Ca. 95

An Attorney who accepts an investment for his principal must account for the proceeds of his principal, or he loses himself. The rule found in John Stile by "Chancery Other his Attorney"

It is paid an equal compensation for principal by Parade and by his Attorney be secured by Bond. (But money not paid be paid under a verbal authority the reason of this rule judge Chancery to see out fraudulently conducted

7 Ch. Ca. 207
2 Ch. Ca. 45
Ch. Ca. 207
Ch. Ca. 207

On the ground principle one partner can not bind the others by Deed except authorized by Power. But this rule must not be conformed with another one, which is clearly that where a Firm present direct another to sign his name to an instrument. An Agent for the Public contracting as such, is not personally liable to his Principal in his capacity as to instruct a Municipal Officer. This question was decided in the United States Court in the case of Porter. One Attorney is to be for communication to his Friends of his Client pursuant a Cash Credit. He cannot give off a pleding a the lien under which might be law a Foreign Court. Taken respective with of Commercial Law cases. The way that appears has power. Any business is performed with in Connecticut.

1 Pick 294

Porter case

Pledge

1 Pick 294

One Attorney is once retained, he can not refuse to further and discharge the case

Attorney and Servant

Cases in the time of Lord Hardwicke 237

The maxim respecting champerty is a fundamental one, but the case and dicta it contains at variance. It would be well with regard to the Client and Attorney if the Attorney's character be pleasant, not precipitated in this but it is Law. The Attorney can not release the Damages at common Law; it is a contract in Consideration: Attorney may be committed for any contempt of Court; what amounts to Contempt is for the Court to determine.

Cases in 2 Ver. 444 Salk. 86 1 Bac. Ab.

If an Attorney agrees with his Client to receive one half of the Land in dispute if he get the same but if he should lose it he receive nothing he is guilty of the crime of "Champerty" and is punished as accordingly. This is practised in some of the States, but is highly detrimental. An Action of Slander may be brought by an Attorney against any one who calls him a "Chicanerator".

of an Attorney to his Client that there is no liability of maintaining his action and the Client invariably having it tried which is now accordingly but he later if he can maintain an action against the Attorney yet if on the other hand the Attorney draw a bad bill by which wrong the Client loses his attachment the Attorney is liable

VI. The Class of Servants consists of Debtors assigned in service: Such Servants are unknown to the common Law. But by a Statute in Connecticut a Debtor committed on Execution and having no property may be assigned in Service to the Creditor, if the Supervisor or County Court think proper and the Creditor defined it. The Debt must be bona fide. This is a Species of Attornentment, though the Servant assigned is not an Object of execution. 5 Lecture

Master and servant

The master will attend the person of the servant, and the terms of the engagement, it to be such as to bind the master and servant at the stipulated wages. The master generally is liable [illegible] the servant guilty of [illegible] to show that such a [illegible] would be [illegible] under circumstances. They will consider the relative character, [illegible] and the claim which either [illegible] have. In general the Court will not object as appearance: one who has a family to support or one who is sick or [illegible] but this indulgence when under cover seems to be a mere [illegible] by [illegible] or to [illegible] by [illegible]: these are all [illegible] the engagement must be strictly observed. There are some rules which [illegible] the master and servant generally. When the master is found guilty of [illegible] and [illegible] the [illegible] of [illegible]. The general

Rule 33

rule

Rule is that those acts of the Servant which are done by the Master's command either expressly or impliedly are in the contemplation of the Law the acts of the Master himself — Regularly all acts done by the Servant in the employment of the Master are deemed to have been done by the Master's command — for qui facit per alium facit per se" To be more particular there be multiplied three classes of acts which include all:

1st. Whatever the Servant does by the express command of his Master.

2d. Whatever the Master expressly forbids the Servant to do in the course of his ordinary business.

3d. Whatever the Servant does within the Scope of his general authority which are all accounted to be the Master's Acts: A Contract made with a Servant as such will be binding without proof the Master's authority is required

to

1 Br. Reg.
1 Bl. Com. 429.
2 Hawk. 402

to the act of the Master = Suppose it employing B to make a Bonnet for a lady in his name; or suppose he hired him to buy a Horse, or suppose he invested him with an Office to act for the Master, as Clerk to a Store. All these acts are done by the Master and, place on the same footing and manner. It would be unintelligible to allege that they were done by the Servant for the Master.

3 Esp. 334.

Of a Servant embezzling in his Master's business is chargeable out of his Master's property the Master may and would be exercised the power as of the Crown has been practised on himself. Of a Servant in possession of his Master's goods in the absence of his Master, neither the Servant maintain an action against the Sheriff under the Statute of Westminster of Wales and Eng. It is said the Servant may bring an action on the ground of his liability to the Master. He;

Cro. Jac. 295.
Wilder v. Ford.

Servant

Master and Servant

However it is not necessary to plead at the Action = the two reasons in the power of which he says they are considered as his against every person except the Master: Excepted, a possession in the Servant gives him a qualified property in the goods. The case of Selling is recovered by the Servant or by the Master is a bar to an action by the other. The proper remedy of the action by the one state, the other and Servant, from hand depending. Doe Sir. not mean he gives Declaration on the goods as his own first as the Master was or could say, for he is the Owner as against every person except the Master, and as of ate Wrongs: Wrongs of the Servant is probable they have an action in the Servant of their Master the Master also can maintain an action. The Master is the Servant is not without have a Separate property of the property of the Master is owned.

3 Bl. 153
Salk 613
1 Lord Raym 89
1 Lord Raym 646
11 Ow 1
10 Mod 254

Salk 170

1 Lord Raym 379
Salk 613
1 Lord Raym 89

Salk 613
1 Lord Raym 646
Carth 153

Lord

Master and Servant

gained from the Servant by an illegal Contract, the Master should recover it as if it had been taken from him by an illegal Contract: That if the Servant squander his Master's property there being no fraud or illegality practised upon him, and he receives not knowing it was his Master's, he shall keep it: According to the Maxim Off two innocent persons must suffer by the wrongful act of a third, he shall suffer who employed the other to do the wrong. If an Innkeeper's Servant robs a Traveller, quest, the Innkeeper is liable. If the Servant [verid] any malfeasance the Innkeeper is liable

5 Bac. 304.
2 Ther. 29

1 Black. 33.
3 Salk. 32.
Dyer 266.

1 Black. 95.

It is said that the Servant is not liable even though he knew the Money to be fraudulent: because he acted by the command of his Master. This rule appears to strange Them to be very questionable. It says the rule is better than any

5 Bac. 305.
5 Co. 505
1 Black. 95

reason

reason assigned for it: though he thinks it very questionable, indeed that it is incorrect. Suppose a Servant should knowingly give Arsenic to a Guest clearly he ought to be punished and if he is liable for this he is liable for a big Dose — a Servant is bound only to obey such commands of the Master as are lawful and honest

3 Bac 505
1 Bl. C. 450
Ex. 23 580.
588.

1 Wills 528.
318.

If a Servant does an unlawful act by the command of his Superior or Master both are liable. But it is said if the Servant does an unlawful act of which he is ignorant in obedience to the command of his Master the Servant is not liable: say if the Master confines person and then orders his Servant to lock the door the Servants act in this case is not unlawful — Suppose the act commanded to be done is in itself unlawful or accompanied with fraud here the Servant is liable of course to

3 Bac 505

Master and Servant

E.G. a command to cut down a grove of trees - The Law of Scotland does not regard the instruction - If a man command his Servant to an act which amounts to an offence he is liable civilter for all the consequences -

2 Ersk. 599

Those Acts not done by the command of the Master either express or implied are not regularly deemed the act of the Master - Man therefore a Servant acts without direction from his Master and not in discharge of the Master's business either generally or specially entrusted to him, the Master is not liable - If then under these circumstances, the Servant enters into a Contract for the Master, the Master is not bound by it: E.G. supposes a Servant employed in the field, leaving his business and commits a battery the Master is not liable - But where there is no express command there can-

Lecture V

be no implied one, unless the act is done in discharge of the Master's business. Upon the same principle, if a Servant makes a Contract without any authority, or injures another at a time when he is not employed in his Master's business, or service, the Master is not liable. If the Servant makes a Contract, without any authority from the Master, and the Master afterwards assents to it, he is then liable. It was lately decided, that if a Servant actually in his Master's employment should wilfully do an injury to a person, the Master is not liable: E.g. if a Servant drives his Master's carriage against that of another person, wilfully and knowingly, the act is not done in pursuance of his Master's business, and the Master is not liable. The reason why the Master is not liable in this case is

that

3 Salk. 282
1 B.C.C. 431
8 T.R. p. 533
Stra. 228
3 Bac. 562

East 136
3 Salk. 441 note
Croft. 179
Cowp. 406
Wood. 458
Sowden
2 East p. 106
Bac. Abr.
782

Master and Servant.

[illegible] in furtherance of his Master's business. Generally it was taken for granted that the Master was liable and it was first decided in Ford that the liability of the Servant was not excluded. It was said [illegible] that if a servant through want of skill or by negligence, and in his Master's business causes an injury to a third person his Master is liable. The Court said it cannot be supposed that when the wilful act was done in driving a carriage or throwing a stone for glory they intended to exclude his Master's liability.

1 Ford 100
3 B & Ad. 488
6 Bing 195
5 Mo. & P. 64
1 Bing. 253
2 Ch. R. 441
2 Ch. Ry. 289
1 Chit. 455
3 Bing. 266

The Master must at his peril employ faithful and skilful servants as respects the public. But the Master is not bound to answer against the wrongful feloniously of his servants. A Surgeon attended against the wrongful act of a patient through negligence or want of skill and the Master is not liable.

2 Chitty 83
n 494

In case a Blacksmith's boy injured a horse in shoeing him, the Master is not lately been held liable 1 B & C. 481

The distinction between wilful and negligent injury has been lately established and understood. The first case was that of a Servant wilfully driving a carriage against another, and the objection was made only to the Action that it should have been trespass instead of an action on the case because the injury was immediate. Hence the Position was correct. But the reason given in the case is from Raym. 150 page was incorrect. The next case was an action of trespass brought for a negligent injury, and the Court said it should have been an action on the case. 2 T.R. 498

Then came the last case, the circumstances as above; and the Court held that an Action would lie against the Master for the wilful act of the Servant. 1 Esp. 106 Sackett 481 1 Bos & Pul 404

Master and Servant

These divisions are all correct, and in the first and third cases against the Plaintiff. Whenever the Master is liable for an forcible injury done without his direction the proper action is on the case and not trespass.

Of the actions, brought against the Servant, the trespass action and not on the case: nevertheless it is said that the act of the Servant, is the act of the Master to only benefit.

The doctrine of legal substitution is only a fiction and means no more than a person may do for another what he could do himself.

Of a Servant wrongfully arresting in his Master's behalf, which latter takes the prisoner, is he a third person to the Master in law? No the Servant is but the intermediate Servant.

(Bouv. Inst. 1883)

This rule has lately been carried further and extended to the second and fourth Servant. Judge Cowen discusses this in the case

a gentleman and a person of rank
may think it may be willing to con
sider it not be required.
So either in this case but the action
will not lie against the intermediate
Servant but against the one who con
tracted the second Servant, or against the
Master. When the indenture of the
Servant amounts to a mutual con
tract between the Master and the
Party indented the Master is liable on
the ground of privity of contract: and
where there is not privity there is no liabi
lity of contract — Large Terms Rights
Power this to be taken in principle that
has been not fixed in or in the Master
the Servant of Mr Montgomerie twelve
to leave a Ship in showing here the
Master is liable on the ground of Contract
for where one indentures to an a time
for another it is lawful for Mr Montgomerie to
use all necessary care and skill. Ca.

Bishop

Bishop
Pitts
Jones
Radcliffe
v.
Wright
K.B.

Sailor

Master & Servant

liable to pay a Servant by his appointing &c.

Upon the analogy of Master and Servant there have been two attempts made in England to subject the Post Master but it is settled that he is not

7 Lecture

Salk. 17. 5 Bay. 646. Salk. 487. Bent. 754

liable for the acts of his Servants nor his Deputies. He is a Servant and receives no hire from the individuals but from the public. The State is the Master he is the Agent or Servant of the State: he is an intermediate Servant and on that ground is not liable: the same rule as to Deputy Post Masters:

Ex. 9th 103 Comp. 185 2 Bl. R. 966 3 Wils. 433

But a Post Master is liable for his own delinquencies: and so if all subordinates separately: each one is answerable for his own acts and defaults.

The Post Master is liable for any negligence shewn in his Office, as if he takes illegal fees: an action of the Assumpsit will lie to recover as for money

for

had and received. Illegal loss are those which are greater than the law allows. We will now consider the liability of Masters on the Contracts of their Servants.

That Master is bound by the Contracts of his Servants when they act within the Scope of the authority delegated to them by the Master.

This authority so delegated may be either express or implied, general or special. A general authority to contract is one not confined to any individual contract but which extends to all Contracts in general or to all Contracts of a certain kind. As A Steward who contracts for all victuals for the family: So a Clerk in a Store has a general authority to contract. A Special Authority is confined to one or more individual transactions. thing or anything. To know

clerk

Comp. 182

Comb. 455
2 Roy. 994
2 Salk. 444
1 B.C.C. 457
2 Term. 545
6 East 3
5 T.Rep. 95
8 T.Rep. 531

[illegible]

[illegible] Act [illegible] authority [illegible] [illegible] [illegible]

Factors and servants

Servants & agents of the factors are
liable for their misfeasances & not
their nonfeasances but as attorneys they
given them a credit and therefore the
factor is liable to the general creditor
& thereby recover satisfaction to the
Discretion of the Court & Jury
and so vice versa. Case of a Servant
without and their master funding
goods for the factors which afterwards
comes to his use he is liable for an
misfeasance & presumed to the fact of
the factors goods by having after their
Return an order and actually in the
Case, notwithstanding the factor goods
recovery by the Servant & funding the
goods, and funding the goods in
kind and receiving the money and the
same to the factors use & allowing
them to be lost or stolen from them
Quere that the factors in the order
not liable unless the order proceeds set

Cited 3 Ch.

Stark 254
Cowp 450
& Cowp 245
Ch. 1 Ch. Ref. 16

the

on a clear principle, the liability of the Master where the goods would be [illegible] on demand or are accounting subsequently: but here is no default for he only buys the goods and pays for them. [illegible] a man may bind himself by admitting subsequently to any Contract made by the [illegible] of the transaction. The [illegible] is guilty of no [illegible] for the Master has paid ready money and has been guilty of no neglect.

If a Master gives [illegible] an authority to his Servant to contract for him on credit yet he may countermand or revoke this authority; he must notify his prohibition for private orders will have no effect: nor indeed will a dissolution of this relation immediately determine the authority: the dealers of the house must be informed [illegible] credit and the [illegible] of revoking his [illegible] must be public:

1 Esp.
Cas. 127.
3 Atk. 701.
[illegible]
157.
2 [illegible] 346.

If a Servant in pursuing a particular Contract of Sale commits a tort
foreign to the quality of the property
the Master is bound unless there was an
express prohibition on the part of the Ser-
vant, and if a Warranty of the property
given by a warrant is procured under the
contrary affirm - But when the
Servant acts within the scope of a gen-
eral authority, even in express violation
and even known to the principal, yet to
the public and for the benefit
liability for the Servant's tortious act
If a Servant warrants a horse to
be sound when he is not, the Master
is bound by the Warranty. But if
the Servant exceeds authority & offer
and it not publicly the Master is
bound by the Warranty. If a Servant
employed in an Livery Stable whose
ordinary business it is to sell the Horses
keep, also warrants them the Master

4 T.R. 390
3 Dr 750
Salk 289
Stiff 395
652
1 Esp. R. 11
10 Mod. 109
Ry. & Moo. 120

3 T.R. 760
761
10 East 104

answer-

Master and Servant

would be liable, he would be bound by the warranty even though expressly forbidden in a particular instance. What difference does this express prohibition make between the Master and Servant in the case of particular contracts between the Servant and the public? Not. But in cases of General authority and the restricted or Warranty: the Master has given the Servant no credit and the Servant after being at his peril, he cannot exceed the limits of the warrant. The leading case on this point is in the Original Authorities. The Lawyer seems to forget it has a questionable authority. Though it may be hard to strictly defend against the large Words it is not reconcilable to such a modern decision.

Cases in Authorities cited 1 Ld Raym 181 Cooke 173

There is another case said to be in the Book which goes thus: it is quite questionable but there is

Servants Alley an unmarried lady asked a servant to give the Master is not liable unless he directed the Servant to call to a particular person the judge says he does no regard for this rule and for the in it for pay by what difference does it make to the servants calling to a particular person or calling the hirelings aloud or putting a general and indiscriminate on the public =

1 Bla 95
Cowper 45
2 Bac 595
3 Bac 590

If a Servant relies on Master's word good & warranty thinking to be good the Master is liable even though he actually held hand for the publication is private and the credit public

Bla 1085
3 Mod 95
Salk 442
2 Ld Ray 909
Stephens 1
Stephens 655

The Servant himself is regularly liable for the contract which he makes for the Master but he may protect himself by contracting in his own name and on his own responsibility and by making express

Accelerand

3 Bac 590
2 Salk 442
Cowper 95

of the Servant made a warranty in his own name is

Master and Servant

is bound by it. But it is not strictly
1 Esp. 228. if the Servant in his Master service
2 Com. 152. makes a Contract without his Master
authority, the Servant is personally
liable and not the Master.

If any one who acts for another and
under his Authority, appears in his
name to be his Servant, they are mere
1 Bl. 43. strangers or Elder may be a Servant for
the purpose of making a Contract bind
the Husband or father. The Statute
Law of Connecticut, provides that an
infant under the government of
a parent, Guardian or Master, only
1 Root 203 provided by either of the three last
mentioned Characters to contract for
himself in his own behalf and bind
either of them. Receive it differs from
the Common Law. This Statute is
general yet none can intend it in
electing the Servants but only Minors
Servants and Strangers which differ
tion

Master and Servant

are Mutual Servants up and under

up and Slaves.

We will now consider how far the Servant is liable for his own acts and Defaults to his Master and to Strangers. The great general principle is, that those acts done by the Servant by virtue of the Master's authority, are the Master's acts. Generally those acts done by the Servant without the command of the Master either express or implied are not the acts of the Master but the Servant is personally liable. In general the Master is not liable for the wilfulty of the Servant but the Servant is himself liable: tho' not the Master's acts. These acts are an independant act of the Servants as his throwing a Stone or Doing an injury. There are some cases in which Strangers injured by the act of the Servant may have their remedy against either the

Skin. 228. 3 Bac. 306 Hob. 64, 21

Salk. 28. Ld. Raym. 733 Hob. 64, 30 6 Bac. 495

the Master or Servant; and the general
rule seems according to this, if the Servant
acted in contravention of his Master's
Sh. 285. Ib. 10, 238. Sh. Ray 320. 6 Mod. 411 " 125. Cy. Dig. 580 " 586 business, or in opposition to another through
negligence, ignorance or want of Skill,
both Master and Servant are liable:
the transaction on which the Servant
was engaged does not amount to a
violation of a Contract between the
Master and the party injured: E.g.
if Servant through negligence drives
his Master's Carriage against another
in this case the Servant is liable: The
rule is the same if through ignorance
or want of Skill. But the transac-
Sand. 284. 6 B. & Sand. 443. 13 M. & W. 131 tion in which the Servant is engaged
at the time when he thus commits
the injury is grounds on a violation
of a Contract expressly or implied by the Master: judge
Alderson says he does not find the negative
rule in the books, yet he thinks it
would be so for example to the last

sale

Master and Seamen

[illegible] in Blackwell's Hall by Lancey [illegible]
[illegible] in [illegible] hire, [illegible] the Master
only is liable. There is an exception to
this last rule in the case of a vessel, and
[illegible] Lord Ellenborough justifying the
Seaman in refusing to go to sea in a Ship
[illegible] for the Master
of a Ship is liable to his freighting for
any Passage received by the negli-
gence of himself or crew up to the Time
even though the Contract is made by the
Owner. Lord Ellenborough and
[illegible] policy seems to require that the
Master should be liable, because
the freighter may not know the Owner
and the Contract is generally made
with the Master. Moreover the Owner
should be not a foreign Owner only
[illegible] of the Contract

Salt Ship
Carter 98
Carter 91
[illegible] 28
[illegible] 195
Lane [illegible]
Cayman

In the attempted of a Servant or Seaman
a wilful act he is always liable, and the
the transaction can amount to a viola-
tion of a Contract in effect is that

Pearce v. Foster

Parties

If the servant himself independent of the master be charged, & then the officer [illegible] a [illegible] in [illegible] time.

Pleaders

The action of trespass for money had and received will not lie against a sheriff's officer for an arbitrary [illegible] for [illegible] money. But will against the officer for money received to his use, but he himself has not a servant. If an attorney brings an action against one, when he knows that the [illegible] has been released by accepted, [illegible] it is not for him to determine whether he thinks his action is not [illegible] good, but he must decide whether he will bring [illegible] the case [illegible] the plaintiff [illegible] the attorney [illegible] the plaintiff [illegible] after [illegible] [illegible]

Corp. 154.

Illegal by 9 Geo. 3. c. 33.

officer

Salford called upon Defendant against the Defendant and both recorded to any liability to an action at the suit of the Party aggrieved.

Bott. 105
Bp. 248.

The Servant is not answerable to the Master.

But the Servant is peculiarly liable to his Master for all wilful damage and neglect of his duty, for all violations of his duty. So where a Merchant's Servant received Bills of Exchange before the Bills were paid and they in consequence were lost here the Servant was liable to the Master. But in action will lie against a Servant for a new fire through of many others or damage have been sustained or for any indebted or ill management. There are more cases of obligations. But if a Servant neglect to perform on Sunday day then fall commenced of his Master's work the Master pertaining in defaying taking time

B. Geo. 364
1 Burr. 466

B. Geo. 261
Adm. 89

1 Salk. 298
Salk. 334

Geo. 288
Sir T. Raym.
Raym. 148
Vide Co. 288

Master and Servant.

Ex. 1. The rule is the same where there is express or only as there is no word of an express command. E.g. An master neglects his servant, Comm.

Ex. 2. Ex. 3. Ex. 4.

This general rule is to be followed that understand a Servant peculiarly undertaken to do his master by neglection of Law to do with fidelity and diligence. Consequently, he is liable for such loss only as happens for want of diligence and fidelity under, and such as happened for want of skill or strength.

Ex. 5. Ex. 6. Ex. 7.

The master are undertaking to do for and been the loss of his business, and consequently he is liable engages to pay loss with all necessary costs.

Scott v. Shepherd 1 Wm. Bl. 892.

Also then that the Servant is not generally liable for loss of goods happening belonging to the master. This proposition however admits of Ground and limitation. If he carries himself as free and strictly intentionally to Others, for in

Ex. 8. Ex. 9. Ex. 10.

liable to the master. Nevertheless the servant is not liable to the injured person for the injury caused which ordinary diligence and care and precaution or prudence would have avoided or prevented by a person of ordinary intelligence and care. The servant is not personally liable to the injured person for the injuries done by the servant. Nor is the master responsible for the injuries done by the servant.

Held. 1 Mod. 19.

Ibid. 1 Salk. 285 & 1 Ld. Raym. 70

Held that the servant is liable to the master if it is not proved to satisfy to come into the master's service and have been paid. In this case the law does not the reasonable of policy and the

Ibid. 1st Salk. 285 & 1 Ld. Raym. 70

Of the Master's Authority over the Servant.

The master has the right to discharge his servant for any breach of duty or neglect in the service of the master. He has the right to compel his servant to do his work in the manner he has a good title for the performance of

Ibid. 1st Salk. 285 & 1 Ld. Raym. 70

Ibid. 1st Salk. 285 & 1 Ld. Raym. 70

Ibid. 1st Salk. 285 & 1 Ld. Raym. 70

Master and servant

of supporting domestic government.

5 Mod. 167.
8 Mod. 120
3 Bac. 566

But the correction to be justifiable must be reasonable. The general rule allows correction a School Master and his pupil &c. But this general rule does not apply to our Country. There is no ground for saying that the slave laws are incorporated in this case. Lord Raymond says, page 1 vol. 1 Ld. that the Master has no right to correct slaves and good slaves are other slaves. Indeed the judge observed, that the law relates only to the servants as much as to the personal contract as slaves.

Lord Raymond in a character and a reasonable Master, allowed to correct his servant, is neither more than a hired servant. Master might be excuse correction to be [illegible] and proportionate.

But if a correction of other Servants than slaves and a character we ought they under age by good order & Reasonable

1 Ld. Ray. 98
Fitz. 144
Ind.

Master and Servant

[illegible] by the master on the death of the servant: The connection would be reasonable hence the master could not be justified in wounding his servant. By wounding his servant would a master be liable or accessory or manslayer. Suppose a master of his servant by persuading the related between them and by a statute in England between a master and servant should [illegible] not guilty as to the relation and a justification as to [illegible] on the Mortal Protégant Upon the Master is used and used justify the battery and wounding or the power of relation he must state the relation of the servant is wrong from the plea the relation and the [illegible] of the servant was [illegible] through the master [illegible] and he must plead not guilty to the proceeding. This point of [illegible] of [illegible] and

Fitz. 37 Fitz. 100, 350. 2 Ro.

Sid. 97

[illegible]

[illegible] 3 Bac. 5 [illegible]

and by his servant or delegate: the hire is procured of the Master or owner between the Servant notice to the hire he is guilty of wrongful conversion: Maxim Slaughter v. Fischer according to the circumstances of the case.

It is held that a Servant can not avoid a Road allowed by Road of his Master or to harrow the enlargement of his Master.

Cases cited

If the Master plaintiff against third persons for injuries done to himself in relation to his Servant.

In general a man has a right to recover of wrongdoers injuries done to his Servant or Servant. This action must be tried with a jury good Sense. Wood v. Wright. Where a man wants out or away the Servant of another the action for this are taken on the case which must be tried with a jury generally. This is the gist of the action

If one's Servant is forcibly taken away trespass will a for quod civiliter ac-cedit in the proper action for the battery: and the injury must be proved: If there is no force the action is not action on the case. Child of a Servant without entice cannot leave his Master for ever unjustly and is retained by one who knew of the former retainer and action lies against the latter for loss of Service. Seem if he be ignorant of the former retainer. Our indictment will not lie against one for enticing away one's Servant: by only a private injury

If a Servant is beaten by another the Master only can maintain an action for his battery. But if a loss of Service is occasioned by the Beater the Master may sue for the consequential damages sustained. The Servant is injured and his Master and the Master is deprived of Service. The two injuries and rights ha-

ing

2 Roll. Rep. 1652
" 1117
Salk. 380
3 Salk. 1201
2 Ld. Raym. 87

Rex v. Ki
Cro. Car.
1. 138

1 Salk. 380
3 Salk. 1201
2 Ld. Raym. 1118

2 Roll. Ab.
p. 546. pl. 5.
2 Salk. 68.
Sayer. 40

Syl.

Wharton and Forrest

[illegible] distinct a necessary [illegible] [illegible] no bar to a recovery by the father

But in the case just mentioned the Court [illegible] [illegible] declare with a [illegible] [illegible] [illegible] [illegible] "for good" in the gist of the action even without it the declaration is demurrable. It [illegible] [illegible] is a Servant of a single woman who [illegible] and an Illegitimate child. Ownership a Master or Mistress being an action for the battery committed on the child. The "for good" in the gist of the action thought not the only rule for damage

The Action is [illegible] founded on the relation of Parent and Child, but on the [illegible] of the relation. Master and Servant. That the relation of Parent and Child is the principal rule of damages & necessary to make real damage of injury. But in strangers beat the Servant of another [illegible] [illegible] [illegible] the master [illegible] [illegible] particular

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

The master and servant

are mutually liable, and that the fine
made against a master in the justice
court, according to the laws & con-
stitution, means of satisfaction and
left the property of the servant is not
forfeited or sold, there is no doubt
If a servant could and he and a servant
wilfully injured it is not left of
Service cause the master may have an
action to recover the left. Suppose then
a servant, no rule in the work,
whether an action will lie for the injury
done through negligence or want of
care, though he is inclined to think
that an action will lie in such cases
the master but the servant may remain
liable and answer for the injury. The gene-
ral rule is, that the servant or indeed
but not, is liable for all the consequen-
ces resulting from it. In the case of
a servant ordered among a set and who
slaves his master without entertainment

and

Bolt 89. 90
Hardy 238
2 Ordes 358

Bolt 8
2 Bolt 388
3 Bac 588

Ent Dig Bolt
2 Roy 2 Bac
Ordes 1 250
Ordes 1 90

3 Term Reps. 380. 1 Bell Ro. 387.

and is retained by another person who knew of the former retainer a recovery by the Master of a judgment with full satisfaction against the Servant is a bar to an action by the Master against the Retainer for his own act tho' not satisfaction. But whether the recovery of a judgment by the Master without satisfaction, is a bar to an action against the Retainer is not settled.

3 Term 138.

Judge Wilson thinks the recovery of a judgment with full satisfaction against the action, does not bar an action against the Servant on the contract, and that a recovery of a judgment in full satisfaction against the Servant by the Master is a bar to an action against the Stranger.

Whether the Master and Servant may justify in defence of each other? Is left and after a third Lecture in a Discussion of Common Law to

the

The offence of maintenance put a Master in mind that his Servant in an action against a Stranger, and not the guilty of the crime of Maintenance. A Servant is justifiable in defending his Master by force, shall justify a part of his rule. Not can an the Master what is with the Master cannot in his own defence = But a Servant can not justify a battery in defence of his Master's Son or any other member of the family except the life, with the help of many called. He is not Servant to the Son = The reason given out of the data. He can not justify a battery in defence of his Master goods: this reason personal. Whether a Master can justify a battery in defence of his Servant is not settled. On this point there are different opinions. The Master certainly has an interest in the behaviour of his Servant. He and his reason are

Offence of Maintenance

Salk. 404 Bulle. 26 Ld. R. 120

3 Bac. 368

Below

Stat. 6 Geo. 4 c. 129 s. 4 & 5 Geo. 4 c. 83 s. 2 & 3 Geo. 4 c. 126 s. 1 & 2 Geo. 4 c. 109 s. 1 & 2 Geo. 4 c. 94 s. 5

action for loss of service in case of a battery but the injury by forcibly preventing the person who owes the battery from a regular and due performance could be said to have arisen, may justify a battery in the defence of his goods and he clearly has an interest in the servant as much as in the goods. Lord Ellenborough thinking the battery justifiable, that the master may defend his servant.

1 Wms. Saund. 82 a. note 4 B. & C. 384

The commander of the Master will not accompany the Servant after having committed the crime.

403

Executors and Administrators

Take Care 2nd.

Executors and administrators are the representatives of deceased persons as to their personal estate and as to their other interests affecting their general estate.

The grant of a representative authority operates in the lapse of the deceased's rights as at death, to vest the land in him.

The administrator's grant is special to the existence of a trust.

In matters of expediency, it is necessary that the court should be satisfied that it is for the benefit of the intestate's estate that such a person be appointed administrator and the next of kin have renounced and given to the disqualified, viz.

A disqualified person may not contravene the administrator's grant in contribution of trust, or take a advantage

Ex. 17.
Ex. 24.
Ex. 24.
Ex. 24.

Ex. 17.

Ex. 17.
Ex. 24. 81.
Ex. 24. 82.

Ex. 17.
Ex. 24. 81.
Ex. 24. 81.
Ex. 24. 81.
Ex. 24. 81.

testament and not governing the disposi-
Toller 2. tion of the personal property of the de-
Swinb. 3. 2. ceased. In sense of the books there is
2 Bla. 11. a general distinction. There may be a will
Wentw. Off. without a testament & vice versa.
Lovelass. 8

The naming an Exor. is the constitution
2 Bla. Com. of a full disposition of the goods of the deceased
Toller 8. the Exor. being bound to pay debts. But
Went. so the naming of an Exor makes a
will. At Com. law a testamentary
Swinb. 1. disposition of lands without naming
an Exor. was called a Will; but such
a disposition of chattels was then called
a "testament" ut supra.

The Administrator is the representa-
2 Bla. 494 tive of a deceased person, in default of
one appointed by law; thro' its proper organ, is
[illegible]. The appointment is only in three
cases, viz. 1. Where no Exor. is appoin-
ted. 2d. Where he cannot act, or
3. Where he will not act as such.

Exors and Admrs. have [illegible]

in [illegible] as relates to those who are entitled to the personal estate of the deceased, and hence the provisions of the law even in cases of [illegible] persons with [illegible] the [illegible] in the distribution [illegible] The heir is the person upon whom the law casts the real estate on the death of the ancestor.

[illegible]

[illegible]

A devisee is a person entitled to the real property by the testamentary appointment of the deceased.

[illegible]

A legatee is one who is entitled to personal property by testamentary appointment. The phrase of the [illegible] in personal estate is [illegible] that those [illegible] are entitled to it. [illegible] estates [illegible] real estate were not originally testamentary. [illegible] may have the designation of real estate [illegible] by [illegible] appointment of the testator.

[illegible]

[illegible] be [illegible] to [illegible] the payment of debts the [illegible] [illegible] [illegible]

of the creditors. [illegible] to [illegible]
[illegible] II. they bind the [illegible]
[illegible] had been purchased, and
from the date [illegible] payment is
[illegible] and the sum is distributed [illegible]
from the [illegible] of the [illegible] to the
[illegible] according to the [illegible] pro
[illegible] in the [illegible] of [illegible]
[illegible] from the time of their registry
and purchased. [illegible] (Equitable)
may resort to either the real or personal
estates. And if the [illegible] in [illegible] the other
[illegible] and it be not sufficient to
discharge all the debts, the "simple con-
tract creditors" are entitled to take all [illegible]
their demands [illegible] [illegible]
[illegible] any [illegible] a[s] since they can-
not take real estates and are postponed
to "specialty creditors." But in the last
case Chancery [illegible] the "simple
contract creditors" to [illegible] them [illegible]
upon the real estate [illegible]

the

Feb. 8th and March 9th.

the place of the creditors hereafter of the
Feb. 8th. personal property. And whereas the
Feb. 8th. contract creditors stand in the place
Feb. 8th. of specialty creditors, such of course of
the said estate. The path is afforded to
Chancery's rendering a date of the best
Feb. 8th. interest to the heirs and the
bona indulgence is taken a person
equity. If the assets of the debtor are
sufficient on average it be made.
Feb. 8th. If creditors on equal degree be who bind
obtain judgment against the counter of
is entitled to his whole demand even to
the exclusion of the rest. But if one of
Feb. 8th. two creditors in equal degree has obtained
Feb. 8th. and a third at law is brought a bill
in Chancery as the rule now is the cred-
tor the second defeat his claim if no
complaint paying the other
If have he recovered from the
payment of debt the first creditor
the money be taken to a court

[illegible] 1 Ed. 20
[illegible] 2 Geo. 1st
[illegible]

[illegible] 1 Ed. 20

[illegible] 2 Ed.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] of [illegible] [illegible]
of the [illegible] which [illegible] [illegible] [illegible]
were [illegible] [illegible] [illegible]
[illegible] for [illegible] in the statute
[illegible] [illegible]. The statute [illegible]
in the [illegible] called [illegible]. The [illegible]
upon the statute as [illegible]
[illegible] [illegible] [illegible]
[illegible] by a [illegible] in the na-
ture of [illegible]

The [illegible] of the [illegible] was [illegible]
[illegible] [illegible] by statute [illegible]
[illegible] which [illegible] as
[illegible] [illegible]
[illegible] of the [illegible] only with
Defined
~~[illegible]~~ put in the ~~[illegible]~~ Delight [illegible] [illegible]
[illegible]
[illegible] which they [illegible] in them [illegible]
in their [illegible] which they do
not [illegible]
[illegible] that [illegible] in the [illegible]
[illegible] under
statute

[illegible] to his
[illegible] is an exception where the
[illegible] immediately liable as
he may be in certain cases: as if
rent incurred on a lease for years after
the death of the testator, a intestate: for
here he is charged on his profession the tes-
tator having never been in possession:
So he is chargeable in the "Debet and
Detinet" in case of a "Devastavit" as if
he [illegible] against him as the [illegible] of the
[illegible] testator: for he that is not
charged with a devastavit on a mere
[illegible]. The heir must be sued in the
"Debet and Detinet" because he has got
in his own right and the debt accrues
with the land: charging him however
in the "Detinet" only is cured by [illegible]
[illegible] the Statute, [illegible] of
[illegible] Common Law the heir could depart the
[illegible] the executor, by delivering the land
before action brought. But if he [illegible]

[illegible]

it after the work was finished and the
office in the Court of King's Bench the
land was liable in the hands of the pur-
chaser the judgt. having relation to the
time of purchasing the original writ
or suing a bill in the King's Bench.
But judgt. upon this land
by retrospect. Every in case for judgt.
against the ancestor. But now by the
late Statute of Fraudulent Devises the
heir in case of such an alienation bene-
ficial action is liable as to his estate to the
value of the lands sold: yet the lands
sold, not liable in the hands of a bona
fide purchaser. In case the heir aliens
after action brought &c. a question whether
the heir stands out this.
It is added that the testator cannot give
the land where he himself is not
bound. Also if it appears that he gives the
debt by his, no action will be given
to the land for the debt.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Regularly the act of an infant under the age of 21 years in receiving the [illegible] of the testator's property is a gift or legacy. But under 21 the age of 21 years is not [illegible] by his agent to a legacy would be [illegible] to pay the debt of the infant. The Ecclesiastical Court [illegible] the testator [illegible] years [illegible] to pay debts of an [illegible] the age of 21. But it has been held [illegible] he may [illegible] to pay debts [illegible] other persons by his order. The [illegible] is contrary to the general rule.

The infant [illegible] of the age of 21 years [illegible] by his mother [illegible] if paid according to the [illegible] of the [illegible] of the [illegible] charge a debt or payment.

But an infant [illegible] of the age of 21 years [illegible] is not bound by [illegible] to his [illegible] service. Thus if he should give an [illegible] without receiving [illegible] payment of wages and [illegible] him: and [illegible] he should [illegible] a legacy under the [illegible]

not affect his rights to a term as if he were found lunatic by the inquisition of a Commission; or if he gives a lease for more than he received thereby and binding as to the disposition there not are not any receiving to the strict duty of guardian. The lease in this case consists a deviation [illegible] of the age of 21. and therefore if a lease be [illegible] made and the infant mistakes [illegible] in receiving the principal only the lease is no bar at law to an action for the penalty. An infant tho' of the age of 21 when sued, cannot answer by guardian like other infants, as the proceedings will be erroneous: for he cannot make an attorney: the reason whereof is that he is no minor after 21 years for minority leading to a writ, quia [illegible] fecit: but at 21 years he has.

But if the lease made by an infant, one [illegible] to a stranger and he [illegible] for

[illegible] 94. [illegible] 1. Ven. [illegible] 2. Lev. 180. 3. Lev. 187. 1. Ed. 4. 1. Ed. 4. 1. Ed. 4. 2. Ven. 198. 2. Ven. 197. 1. Ed. 4. Coke 172. Co. Lit. 171. 41 Edw. 3. 29. 1. Ven. 269

2 Bac. 99. 2 Bac. 100. 2 Ch. Ca. 24.

judgment is not necessary to be made against the infant even the judgment is for his benefit. If an infant sues in equity and a suit for the account the court judgment is for him: the distinction is plain because in the case that an infant cannot act till he is of age of 21 and the reason that he cannot till that be arrived take the official oath.

2 Bac. 100. 2 Bac. 101. 2 Bac. 102. 1 Ch. Ca. 47. 1 Ch. Ca. 48. 1 Ch. Ca. 49. 1 Ch. Ca. 50. 1 Ch. Ca. 51. 1 Ch. Ca. 52.

If an infant sues or is sued to be sued they may both sue by attorney: for the adult may make an attorney for the infant. But if they be sued the infant sue or must appear by guardian for an infant defendant can be made liable by pleading to avoid the demurrer for which he has no remedy against his attorney but against his guardian he has a remedy. An infant plaintiff is not liable to costs.

A Court may be an infant according to the law of the Universal Court

[illegible] or the [illegible] and she is [illegible] as a feme sole capable of [illegible] being [illegible] of taking upon herself the office of exec.x without her husbands consent. But by the law the wife cannot take upon herself the office of exec.x without her husbands consent [illegible] the husband consent, the [illegible] [illegible] [illegible]. And there-fore if the husband refuse, the [illegible] and if the [illegible] [illegible] ought to compel her to act as Executrix with the [illegible]. [illegible] on the other hand the wife's consent is necessary and she cannot be compelled to take the executorship upon herself by the husband's consent ag.t her own will. But if the husband ac-tually administers she is bound by his act during coverture. The [illegible] [illegible] [illegible] if the wife administers without his consent and an action be brought ag.t them, they are [illegible]

bound

2 Bl. 378.
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

2 Bl. 378.
[illegible]

[illegible]
[illegible]

[illegible]
[illegible]

notwithstanding that she survives Husd.

If a feme cov[illegible] be possessed [illegible] and [illegible] either she intermarries with the estate and the husband assents to this, such an acceptance as will bind him not the [illegible] [illegible] afterwards refuse it. The rule probably only shews the [illegible] not to have [illegible]. — 1 Bac. 78. Swint. 10.

A feme covert [illegible] it is said may without her husband's consent make a will or rather a testament of such goods as she has as Executrix. — 2 Bac. 278. Godol. [illegible] Swint. [illegible]

On the contrary it is admitted by some that the husband's consent before or after is necessary. (But it seems not [illegible]) that she as [illegible] may make an [illegible] of the goods which she holds as [illegible] and this [illegible] the same as [illegible] testament for the [illegible] and will have the [illegible] of the goods. — 1 Bac. 148. [illegible] 278. [illegible]

The thing [illegible] [illegible] [illegible] but [illegible] [illegible] [illegible] [illegible] [illegible] — [illegible]

[illegible]

of the trust and they may be sued as the representatives of the deceased. — Swin. 6.

A Corporation aggregate cannot be an Exec^r because it is a body framed for special purposes. And 2^ndly it cannot take the oath to make probate of the will. — [illegible] 2 Bac. Ab. [illegible] [illegible]

The latter reason, the substantial objection [illegible] a sole corporation may be an Exec^r because it can take the oath.

According to the Civil and Canon laws infants, traitors, felons, outlaws and [illegible] could not be Exec^rs. — Swind. 80. [illegible] Went. 17.

By the English law an infant is capable [illegible] as only public offences and [illegible] traitors, outlaws and felons attainted may be Exec^rs because they are in [illegible] but they cannot sue [illegible] their goods are forfeited. — [illegible]

Persons excommunicated cannot be Exec^rs [illegible] because [illegible] from the Church they cannot [illegible] of the goods of the [illegible] [illegible] the only [illegible] — [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

money because he spent [illegible] for such [illegible] from the estate: [illegible] that [illegible] more security. [illegible] the estate [illegible]. But Chancery [illegible] the [illegible] will compel him like all other trustees to give security [illegible]. So where the [illegible] insolvent [illegible] after [illegible] will compel him to give security. So on a suggestion of insolvency [illegible] Chancery will order the debts of the deceased not to pay the [illegible] from [illegible].

[illegible]

2 Bac. 397.
[illegible]

[illegible]

[illegible]

What persons may be Administrators.

All persons who are not legally disqualified may be administrators. A person cannot act as Adm. till the age of 21, for before that age he cannot give bond to the ordinary which [illegible] not [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] administered as in executorship [illegible]
[illegible] by [illegible].

[illegible] In an [illegible] may be an executor as
[illegible] well as [illegible] the same qualifications
[illegible] in the case of an [illegible] as in the
case of executorship.

[illegible] Infants and lunatics cannot be administrators.

Origin of Administrations

[illegible] It has been said that administration
[illegible] in the disposition of goods of intestates
[illegible] belonged originally to the [illegible] and
Accordingly [illegible] the King was
[illegible] entitled by the [illegible] to seize upon the
[illegible] goods of all intestates and dispose of
them as parens patriae and general
trustee. Afterwards [illegible] the care
[illegible] and custody of the goods of intestates to
[illegible] [illegible] the [illegible]
[illegible] the jurisdiction of the Ecclesiastical
[illegible] in testamentary matters and [illegible]
[illegible] [illegible] of administration is said to have
commenced.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

With [illegible] [illegible] will accept or [illegible]
[illegible] [illegible] [illegible] [illegible] the [illegible] [illegible]
[illegible] the next [illegible]. If there be no [illegible]
husband, wife or next of kin, the [illegible] [illegible]
[illegible] to [illegible] [illegible] or rather seem [illegible]
[illegible], and the ordinary appoint.

[illegible] [illegible] to refuse, to act or [illegible] intestate
[illegible] [illegible], or administers [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] the [illegible]. [illegible] 2 Bu. 381. 2 Bl.

But in this case the statute, 22 and 23
and 29 Car. II. do not govern the [illegible]
[illegible]. The [illegible] [illegible] administration to
the [illegible] [illegible] in exclusion of the
next of kin: is the presumption that [illegible]
an intermediate [illegible] [illegible] be [illegible].

[illegible] [illegible] [illegible] presumption [illegible]
[illegible] [illegible] [illegible] [illegible] given to [illegible] them
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
to the [illegible] [illegible]. But [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] than the [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] the [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] the goods belonging to [illegible] the goods of the deceased; these do not make them Exec^rs but a kind of bailiffs [illegible] to gather and keep the goods [illegible]

Where an [illegible] [illegible] of an infant, [illegible] the administration [illegible] in the [illegible] for the infant [illegible] in right of the infant; he therefore is not obliged to administer [illegible] to the [illegible] or infant.

After [illegible]

Of [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] matter on office. Several administra-
tions may be granted of distinct things but
not of one entire thing, [illegible]
If power be given [illegible]
limitations & restrictions he cannot be
sued with part. Then he cannot sue in
a term [illegible]

The court [illegible] at all
and the same rule [illegible]
in case of administration granted gene-
rally. It was formerly doubted
whether administration could be granted
to one during the absence of the executor out
of the realm, but it is now settled that it
may be. So during the infancy of the executor
& out of the realm.

[illegible] So a temporary administration
may be granted while the right of ad-
ministration is in dispute. [illegible]
to be granted in the case of bastardy where
the bastardy is pending [illegible]
[illegible] the kind of administration

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] not being [illegible] to the [illegible] by [illegible]
the [illegible] Earth, [illegible]
[illegible]
[illegible] on the [illegible]
[illegible] in a [illegible] the [illegible]
[illegible] case [illegible], the [illegible]
[illegible] intestate.

[illegible] is entitled to
all the personal products of the residue
which remains undisposed of [illegible]
in [illegible] household goods [illegible]
[illegible] received by the original
[illegible] and [illegible]
[illegible] the [illegible]
the original [illegible] But if the
original [illegible] takes [illegible] with [illegible]
[illegible] the testator the accumulation of the
[illegible] by such an alteration of the [illegible]
by that the [illegible] Remainderman
[illegible] the [illegible]
in the [illegible] Remainderman.

[illegible] Vol. 386.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 Geo. IV. c. 87. 3 Geo. IV. c. 46. 4 Geo. IV. c. 96.

and administration be obtained by bond with a surety of the first and third class, or release, but administration to a convict must be obtained and the bond paid. The administration duly obtained may be revoked in consequence of another being first granted (as if the original administrator should become a lunatic) or otherwise incapable of administering.

1 Geo. IV. c. 87. 1 Geo. IV. c. 87. 1 Geo. IV. c. 87.

If the person legally entitled be under the age of twenty-one years, administration be for his use granted to another, this administration may be revoked when the person becomes capable.

Lord 18. 19. c. 43. Burn's Ecclesiastical Law 130. 1 Geo. IV. c. 87. 443.

Administration is also may be revoked besides without a sentence of excommunication, or by granting a new administration, which is deemed a repeal of the former.

Lord 19. c. 43. Burn's Ecclesiastical Law 129. 2 Geo. IV. c. 10. 1 Geo. IV. c. 87. 443.

The necessary consent of Infants
to Administration.

It is a general rule, that where the party
entitled to the administration, happens
to be a minor, he is not to have the grant; but rule
is not absolute. Therefore if the court
intend to be regularly granted, that a
minor person ought to be strongly opposed
in a citation by the minority of the intes-
tate; notwithstanding, at the last term, an grant
was made to the guardian of the intestate's hand
because it was a lawful action, such as a
right of a term of years. But this case it be
good, there was a caveat to the intestate
the person entitled like one without a term of
actually by rule. But if a term of years
and expired by citation made a gift of
by intestate, good by [illegible] when the
[illegible] the gift is void as against the intestate
[illegible] [illegible] [illegible] the
[illegible] term. [illegible] in the last case, the
first term [illegible] and [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

administrator with [illegible] [illegible] and [illegible] as the [illegible] of the [illegible] [illegible] [illegible] letters granted [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] that a creditor [illegible] [illegible] the [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible].

3 H. [illegible]

But the rule [illegible] after a [illegible] [illegible] [illegible] cannot remain [illegible], not [illegible] where the deceased [illegible] a valid will; but in case of actual intestacy [illegible].

1 Com. Dig.
2 [illegible]

If the deceased has left a will and the Ordinary not knowing the fact grants administration and the [illegible] afterwards proves the will he shall avoid all the acts done by the [illegible] for the [illegible] [illegible] [illegible] the [illegible] could not [illegible] [illegible] the [illegible] [illegible] authority to grant administration [illegible] [illegible] case [illegible] [illegible] intestate [illegible] [illegible] [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [

modification in regard to the rule according to which
[illegible] approved for it does not
affect at all question as to the rights of "death" and other actions, the testator's contract and other actions, for "rent" as accrued in the life time of the testator.

Suppose now a tenant to sue for rent
[illegible] after the testator's death
[illegible] the rent accrued in the testator's life time, can he recover upon the supposition? The rent accrued in the testator's life time, and the action to recover it accrued before the testator's death. Suppose a tenant of letting testamentary, not nuncupative.

Suppose a tenant to sue Executors, a rent
for rent due a year and a half for a term for years, comes to him from the testator and the rent accrues after the testator's death to the rent accruing after the testator's death, vested in the executors. What he contends is that all of the rent accrued during the testator's life is before provided for

[illegible]

Sec. 3. and 4.

[illegible] be [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 Bac. Ab. Ejectment

the Defendant by his Attorney, and the Jury without assessing that he has received damage if any action be brought against them, and be ordered that the Plaintiff take in abatement the 5th the damage of the office caused by the Defendant to be entered in Judgment yet he cannot be barred and there needs common and Jury [illegible]

1 Bac. Ab. Ejectment 100

Cont. 100

2 Bac. Ab. Ejectment 100

Cont. 100

3 Bac. Ab. Ejectment 100

Cont. 100

The effect of recovering and possession is to prevent the Defendant, and from entering the effect of the recovery and possession is to take away the power to sue to make void or barred.

But if a trespass be committed on the goods of the testator while in the possession of the executor the Jury may find a verdict for the Defendant be made out of the Land by [illegible] possession. Contrary rule of [illegible] in Bona of the Goods on the [illegible] that the possession of one is the possession of the other [illegible]

2 Bac. Ab. Ejectment 399

Cont. 399

1 Bac. Ab. 399

1 Ser. 402

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

of the accused with a view to procuring the children's return, offering for such forbearance to use no further or other endeavours to obtain possession of the children, or to institute a suit for the custody of them. In taking the effect under the claim of Appellants under the claim, namely, of fraudulent and improper artifices to have been not conducted to actual fraud and offence to make an unlawful act to be done, and a question of law.

Upon such an issue the principal question arises, the following question:

If the act of the prisoner be such as hereby increases the inference that he did not the prisoner's general and legal right to the custody of the children, and if the jury be satisfied that he did not, then he is guilty, notwithstanding the fact of the offence.

The above rule of which we have not been able to find applied in this but extend only to cases where there is no actual fraud or force, and to those in which there was one

at

Opp. 1.

Opp. 2.

Opp. 3.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] of Treasury and

[illegible] Distributors.

[illegible]

[illegible] ment [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Exec. and Adm.

[illegible]

[illegible]

Exemption of Specific Legacies

[illegible]

Sec. 85. [illegible]

[illegible]

[illegible]

Sec. 86. [illegible]

[illegible]

Sec. 87. [illegible]

any agency, either in the death
of the testator or before.
If a specific legacy be lost or taken
away in his lifetime, the legatee
takes it as a gift, and has no
claim to the pecuniary legacy.
If there be several specific legacies,
it should be left each different legatee
to pass any known thing, and so on
in order. If there be several pecuniary
legacies, specific legacies, the one
first, and are always preferred, and there
shall be no average between them.
Where one, when pecuniary legacies,
are preferred to specific, but this
does not apply in the interest of the
testator. If, after the testator's estate
is partially, then it may be
executed as specific legacies, where the
personal estate exceeds and the
pecuniary legacies, given to
the exclusion of the personal estate, the specific
legacies are charged to make up the
pecuniary

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] the testator [illegible] the [illegible] rather than the [illegible] of the [illegible] to signify that intention [illegible] sufficient — [illegible] the intention. [illegible] presumed that grandchildren [illegible] under the denomination of children if the testator has no children; but grandchildren [illegible] considered as children in no other case. If a man [illegible] legacy to his children and grandchildren [illegible] the testator [illegible] children [illegible] of the testator's [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

property: but the remainder of the one
they take from only where there are
brothers and sisters, or relations
living. In the distribution of personal
property no distinction is made between
the whole and the half blood, the child
born of each equally be distributed
regardless of property and of quality
of blood. If a father of a person deceased
be living the mother takes nothing, it
comes wholesome the brought back was
to be strangers. If after the death of
father and mother "a person is taken
prisoner" by Government for an heir
cannot the son be his father and mother
being still living, it seems a doubt whether
his mother would be entitled to any
thing or not. But, the father might be
his personal property, as some in this
case should be found, but if he died
the would have a prior claim.
If the women were not to succeed at
their

[illegible]

[illegible] the [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible]

[illegible]

Question [illegible] State died leaving a wife and three children.

Question [illegible] was the wife entitled to [illegible] two thirds, and the children each taking a third.

Case III. [illegible] State died leaving a wife and five children.

Answer. The estate is divided into eighths among the children.

Case IV. [illegible] State, leaves two children and the [illegible] and the [illegible] being alive.

Answer. The two children take each one third and the [illegible] child the other third, to exclusion of the father.

Question. [illegible] State died leaving a child by his child, B. [illegible] and also left a child C. and his child B. [illegible] dies first.

Answer. [illegible] the child of [illegible] State takes the share of the second

[illegible]

a lis grandchild, take another third by
way of legal representation of his father
B. and the other third, divided between
the children of B. as his representatives, for
representative take, per stirpes, and not
per capita.

Case 3rd If one of the children were
dead but to have a child or children,
C. and D. and B. leaves C. & D. and E.

Answer. The old stock being extinct, for
representation sake and of course the
children of C. & D. take four each
[illegible] the same rule.

Case 4th If B. leaving two children C and D. his child C. is dead and
D. his child D. is living, what is
answer. The children C and D take
each 1/2 and share by the remaining
B. as representative of their father
B.

Case 5th If testator gives to his
father Bede [illegible] may be
[illegible]

brother and sister of the whole blood and daughter of the half blood on his side, and uncle and aunt by and his uncle George and aunt Ellen.

Answer. The wife takes one half of the estate according to the statute being a widow and the father the other half.

Case 6th. The only relations living are two sisters and a brother, and sister of the whole blood, one sister, and the son of the half blood brother and sister and his uncle George and aunt Ellen.

Answer. The brother and sister of the whole blood and also of the half take the estate between them equally in relation of the uncle; they being in the second while the uncle and in the third degree of kindred.

Case 7th. The same case as the last only there are three sisters and a son of a sister and son of a son of a son but no

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[illegible] [illegible] [illegible]

left a child &c.

Answer. [illegible] [illegible] are entitled to the being thereof [illegible] the deceased: for the child [illegible] entitled to the other third being the legal representative of his father Tom.

Case 3rd. [illegible] the brother [illegible] [illegible] [illegible] [illegible] [illegible] the child of Tom [illegible] [illegible] the children of [illegible] are living.

Answer. In this case [illegible] [illegible] of the estate [illegible] [illegible] [illegible] the legal representative of Tom [illegible] third [illegible] [illegible] the [illegible] being the representative of Dick.

Case 4th. [illegible] John the brother [illegible] [illegible] [illegible] [illegible] Tom left [illegible] children [illegible] Dick left children [illegible] [illegible] [illegible]

Answer. In this case the [illegible] [illegible] [illegible] representatives [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] together with the children of [illegible] [illegible] [illegible] divide the estate [illegible] [illegible]

[illegible]

[illegible]

living [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Answer. There [illegible] the [illegible] of [illegible] the estate of the child.

Case [illegible] the [illegible] of [illegible]

[illegible] died [illegible] 18[illegible]

Answer. [illegible] the whole estate in exclusion of the [illegible] [illegible] brother [illegible]

Case [illegible] died [illegible] Jennings 183[illegible] [illegible] Jennings [illegible] Jennings [illegible] Jennings [illegible]

Answer [illegible] the [illegible] estate [illegible] of [illegible] the [illegible] of the [illegible]

Case [illegible] died [illegible] 18[illegible]

Answer [illegible] the [illegible] the children of

[illegible]

[illegible] would be [illegible]
[illegible] [illegible] [illegible]
[illegible]

[illegible] [illegible] [illegible]
George left [illegible] [illegible]
Answer. The children of George [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible]

Except the only [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Answer. According to the general principle
[illegible] [illegible] [illegible] [illegible]
equally: but this case [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Question. [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

he may not have been led down thus
that the Sec. of Adm. is liable for the
[illegible] by and for the act of the testa-
tor or intestate. For neither branch
of this rule is strictly true. The testa-
mentary or intestate [illegible] appears to be
[illegible] by the [illegible] committed by the testa-
tor or intestate has benefited his estate
by [illegible] or [illegible]. If the act
has not been benefited the estate does
not [illegible] against the [illegible] and
the estate of the party appointed has
been [illegible] by the tort [illegible] [illegible]
[illegible] that the [illegible]
[illegible] the estate has
been benefited: but whether or not it has
been injured by the tortious act.

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] committed by
[illegible] testator or intestate. The present
[illegible] of the [illegible] [illegible] [illegible]
[illegible] the [illegible] of the [illegible]

[illegible]

[illegible] as being representatives, or [illegible] testator [illegible] to the [illegible] with the [illegible] of [illegible] to be [illegible] but the [illegible] in the [illegible] stat. [illegible] Hence the stat. [illegible] a liability on the [illegible] personally [illegible] [illegible] &c.

Where a right of recovery in the lifetime of the testator or intestate survives against the exr. [illegible] however the action brought agt. the latter [illegible] in tort [illegible] contract and the remedy [illegible] of recovery by [illegible] which cannot be [illegible].

Comb. 220. [illegible] [illegible] 1812. [illegible] 31.

If an action which would survive agt. an exr. be brought agt. the testator and the latter dies pending the suit, the action does not abate. If in this case the action be such as would not survive it would abate. If therefore an action be brought agt. an exr. and the action [illegible] [illegible] the [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] of things [illegible] the Legatee [illegible] debtor not [illegible] obliged to [illegible] benefit of [illegible] the consideration of [illegible] Contract. But it is doubtful whether the [illegible] have consented in waiving all these legal advantages which the testator [illegible]

A count for money had and received [illegible] to the use of the Exr. as Exr. may be joined with a count for money had and received to the use of the testator.

But the Exr. cannot join in one declara-[illegible] tion a cause of action which accrued to him as Exr. with one which he has in his own right. [illegible] which the [illegible] Exr. [illegible] he shall [illegible] in his repre-sentative capacity.

[illegible] the Exr. is [illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

between the [illegible] and [illegible]
[illegible] [illegible] [illegible] and [illegible]
[illegible] of the [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] their [illegible]

If a tenant or intestate die possessed
for [illegible] of a term for years it belongs to the
[illegible] or [illegible]

If a lease for years come to the [illegible]
in [illegible] [illegible] [illegible] and
[illegible] the [illegible] of the profits
[illegible] any after allowance for repairs [illegible]
and the [illegible] the same with respect to
all accruing profits

If the lessee [illegible] a lease make a lease
the rent on the [illegible] goes to his

All revenues [illegible] [illegible] of the
[illegible] [illegible] in the [illegible] of the [illegible]
[illegible] and [illegible] may go against [illegible] [illegible]
[illegible] to be [illegible] when they shall [illegible]
[illegible]. Exercises of [illegible] in
the [illegible] of [illegible] are in [illegible]

[illegible] and [illegible] 779

[illegible] real assets in the hands of the
[illegible] same as law.
If the heir [illegible]
[illegible] the future estate of
the heir is assets when they shall
[illegible]
If the testator has mortgaged or devised
an estate [illegible] the estate in the
death is assets in the hand of the heir [illegible]
[illegible]
The heir also [illegible]
a [illegible] if he will pay the money
[illegible] pledged, but [illegible]
[illegible]

That species of personal property called
"paraphernalia" [illegible]
to the [illegible]. The first kind of
paraphernalia [illegible]
The second [illegible] personal
[illegible] this subject has been considered
under another head.

See title Husband and Wife

[illegible]

[illegible]

[illegible]

The [illegible] have been for the faithful discharge of his trust and the [illegible] are controllable by the [illegible] to give caution in security, they being trustees. So [illegible] as he is a [illegible] before he is [illegible] and the [illegible] are effected, that before that [illegible] can not give bond.

[illegible] be [illegible] a [illegible] required [illegible] before [illegible] binding notwithstanding he [illegible] of the [illegible].

If the [illegible] [illegible] of the [illegible] [illegible] accounts [illegible] to forfeit his [illegible].

[illegible] the [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] coroner [illegible]

[illegible]

Reeve
and
Goulds
Lectures

W. Bond

I